
United States
Court of Appeals
 for the Ninth Circuit

FOX WEST COAST THEATRES CORPORATION,
 TWENTIETH CENTURY-FOX
 FILM CORPORATION and LOEW'S, IN-
 CORPORATED, Appellants,

vs.

PARADISE THEATRE BUILDING CORPORATION,
 Appellee.

PARADISE THEATRE BUILDING CORPORATION,
 Appellant,

vs.

FOX WEST COAST THEATRES CORPORATION,
 TWENTIETH CENTURY-FOX
 FILM CORPORATION and LOEW'S, IN-
 CORPORATED, Appellees.

Transcript of Record

In Six Volumes
VOLUME V.

(Pages 1905 to 2388, inclusive)

Appeals from the United States District Court for the
 Southern District of California,
 Central Division

No. 15424

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(Testimony of Cecil L. Dunn.)

Mr. Corinblit: Your Honor, I must object to this question as completely speculative. We have got two streets, Manchester and Vermont, and two streets, Manchester and Sepulveda, and this witness, without any foundation, is talking about something being easier and harder. There is just no foundation for any such conclusion. A street is a street. One thing is around the corner and the other thing is around the corner. I will object to the question as no foundation laid.

The Court: Objection overruled. [2500]

Q. (By Mr. Westbrook): Where is the South-side Theatre located?

A. Vermont and Imperial.

Q. Not on Vermont and Manchester?

A. No, of course not. I am sorry. Did I say that?

Q. I don't believe so. I think counsel did.

A. I said out Vermont and around the corner and down to Imperial.

Q. Have you made any effort in the course of your study to determine the effect of varying degrees of competition, or, putting it another way, varying degrees of loss of patronage upon the results achieved by the Academy Theatre?

A. Yes, I have.

Mr. Westbrook: My attention is called to the fact, your Honor, that I neglected to offer this La Tijera day and date versus exclusive run comparison in evidence.

The Court: It may be received in evidence.

(Testimony of Cecil L. Dunn.)

Mr. Westbrook: That would be Joint Distributor Defendants' Y-5.

The Clerk: Y-5.

(The exhibit referred to was received in evidence and marked as Joint Distributors' Exhibit Y-5.)

Q. (By Mr. Westbrook): Now, Mr. Dunn, if you were to assume a 20 per cent loss in patronage in the Academy Theatre—first of all, let me interrupt. [2501]

Mr. Westbrook: Counsel, it was stipulated the other day that the Academy Theatre's profit during the one-year period concerned with here was \$44,000.

Mr. Corinblit: I believe that is correct.

Q. (By Mr. Westbrook): If you were to assume a 25 per cent loss of patronage to the Southside Theatre, I would like to consider with you the—

A. My comparison, Mr. Westbrook, or my study of theatre grosses relates to the Academy, not the Southside.

Q. I'm sorry. Excuse me. I meant to say the Academy. A. Yes.

Q. Assuming that 25 per cent figure that I mentioned yesterday in loss of patronage to the Academy, I would like to go through the results of that loss of patronage in terms of profit with you.

A. Yes.

Q. The figure placed in evidence the other day for the gross of the Academy during this period of time was \$197,600. A. Yes.

(Testimony of Cecil L. Dunn.)

Q. The figure of gross and film rental. Now, the film rental figure was \$88,141. If you assume a 20 per cent loss in patronage, how would that figure be affected? A. 20 per cent or 25 per cent?

Mr. Corinblit: Excuse me, your Honor. I object to this as being totally argument. There is no foundation for a [2502] loss of 20 per cent patronage at the Academy. Mr. Westbrook is saying assume, and I don't know. Maybe we can go into a broad argument like this on 20 per cent, 25 per cent or 100 per cent. There is no foundation laid and it calls for a conclusion. * * * * * [2503]

The Court: Objection overruled.

Q. (By Mr. Westbrook): You mentioned that you had a 25 per cent computation.

A. 20, 25, or 30, whatever you want.

Q. Let's take 25 per cent.

A. 25 per cent. All right. 25 per cent of the gross revenue, there would be \$49,400, and a similar adjustment in the film rentals would be \$22,035.

Q. Excuse me, Mr. Dunn. I should put down over here the totals after the 25 per cent deduction.

A. The total after the 25 per cent would be \$148,200 [2504] gross revenue.

Q. And the film rental after—

A. After adjustments would be \$66,106, so that the revenue, after the adjustment, I mean revenue after deduction of film rental, after these 25 per cent adjustments, would be \$82,094, instead of the \$109,459 actually realized. The difference between 82,094 and 109,459 is \$27,365.

(Testimony of Cecil L. Dunn.)

Q. You are going a little fast for me, Mr. Dunn.

A. I'm sorry. \$27,365.

Q. Now, what percentage of profit of the Academy Theatre—

A. That is the net loss in dollars, but that represents 62½ per cent of the Academy's profit of \$44,000, so you lose 25 per cent in patronage and 62½ per cent, or two and a half times as much in profit.

Q. Now, are there any other factors based upon your experience as an analyst of competitive problems that should be brought to bear on this type of answer, that is the effect of competition upon a going business enterprise?

A. Yes. This is just a straight line adjustment, assuming that you lose this patronage and that much profit and nothing else would happen. But actually, of course, a lot of other things would happen. If the management began to see its profits vanishing at this rate, the first thing that it would try to do would be to cut expenses, and when it started to cut expenses, one of the first things that would suffer probably would be film rentals, which means that they would be in a less advantageous position to bid for the better pictures, and as they downgraded the character of their pictures the gross would fall off and they would get into the famous descending spiral which probably in a very relatively short period, in the absence of some extremely determined action on the part of the man-

(Testimony of Cecil L. Dunn.)

agement, would probably carry the profits down even more rapidly than has been indicated here.

That, of course, is typical of the declining stage of a business in general.

Mr. Westbrook: I would like to offer this analysis of the Academy's assumed 25 per cent loss of patronage in evidence as Joint Distributors' Exhibit Y-6, your Honor.

Mr. Corinblit: Same objection, your Honor.

The Court: Same ruling. In evidence.

(The exhibit referred to was received in evidence and marked as Joint Distributors' Exhibit Y-6.)

Mr. Westbrook: I have no further questions. You may cross examine.

Mr. Corinblit: Thank you.

The Court: Mr. Corinblit, it is 10 minutes to 11:00 and probably we should postpone the cross examination until after the morning recess.

Mr. Corinblit: Yes, sir. [2506]

The Court: Ladies and gentlemen of the jury, we are about to take another recess. Again it is my duty to admonish you you are not to discuss this case with anyone, you are not to allow anyone to discuss it with you, you are not to formulate or express any opinion as to the rights of the parties until this case has been finally submitted to you.

With that admonition, we will now recess until five minutes after 11:00.

(Recess.) [2507]

(Testimony of Cecil L. Dunn.)

The Court: Do you stipulate the jury are present and in the jury box?

Mr. Corinblit: Yes, your Honor.

Mr. Westbrook: So stipulated.

Mr. Corinblit called my attention to the fact that I had not offered in evidence the work sheets showing the day and date exhibitions between the Paradise and other theatres, which I would like now to offer as Joint Defendant Distributors' Exhibit Y-3-A.

The Court: In evidence.

(The document referred to was marked Joint Distributors' Exhibit Y-3-A, and received in evidence.)

Mr. Westbrook: Then also there is the work sheet on the Paradise and Academy analysis on three comparable pictures which I would like to offer as Exhibit Y-3-B.

The Court: In evidence.

(The document referred to was marked Joint Distributors' Exhibit Y-3-B, and received in evidence.)

The Court: You may proceed.

Cross Examination

Q. (By Mr. Corinblit): Mr. Dunn, my first group of questions are directed to the question of your qualifications to give the answers you gave today.

I want to ask you a few questions in that regard. Would [2508] you give me a list of the theatre

(Testimony of Cecil L. Dunn.)

companies for whom you have prepared market surveys in connection with theatres being built in the Los Angeles area?

A. I have never made a market survey of a theatre which was going to be built in the Los Angeles area.

Q. Would you give me a list of the—assuming a theatre was going to go into a given market, would you give me a list of the location surveys that you made for the purpose of determining where in a given area a theatre was going to be located?

A. I never made a market survey specifically aimed at a theatre as such.

Q. All right.

A. But I have made market surveys for areas in which theatres and other enterprises were comprehended as a matter of the total plant.

Q. But you never worked for a theatre company, is that right?

A. No, sir.

Q. Now, incidentally, since 1951 have you worked for O'Melveny and Myers?

A. No, sir.

Q. The last time you worked for O'Melveny and Myers was in the 1951 case—in the Baldwin case?

A. That is correct. [2509]

Q. Before you worked for them you worked in the Markoy case, is that right?

A. That is right.

Q. What firm employed you there?

A. Loeb and Loeb.

Q. That is the defense counsel in this case?

(Testimony of Cecil L. Dunn.)

A. That is right.

Q. And before you were working for Loeb and Loeb, you worked for Mr. Gene Williams of Freston & Files? A. That is right.

Q. That was in connection with the Shorak case?

A. I think that was involved—I always identified it by the name of the theatre.

Q. The Puente Theatre? A. Right.

Q. And those were defense counsel?

A. That is right.

Q. Really what you have done in the motion picture business specifically is prepare studies for defense counsel in litigation, isn't that right?

A. That is right.

Q. And you have never yourself worked for a theatre company, a theatre operator in making marketing or marketing surveys?

A. That is right. [2510]

Q. Now, I take it the same thing is true—you have never worked for a distributor in trying to work out a market survey as to how he should distribute his pictures? A. That is right.

Q. And that was true during the entire period of your experience? A. Quite.

Q. All right. Now, would you then change the designation of your work in this connection with this case as a litigation specialist rather than a marketing specialist? A. No.

Q. You wouldn't? A. No.

(Testimony of Cecil L. Dunn.)

Q. Your work is only in connection with litigation, though?

A. It is market analysis and whether it is used in litigation or not is immaterial.

Q. But you have only done it for litigation for the theatre industry?

A. In the theatre business, right.

Q. Now, as a matter of fact, you have only done it for three firms? A. That is right.

Q. And they are all defense firms?

A. That is right. [2511]

Q. You have never done it for a plaintiff firm?

A. No.

Q. All right. Now, when you gave your opinions on this matter of substantial competition, for example, Mr. Dunn, did you take into consideration any of the opinions of the people, responsible people of the motion picture companies who were responsible for distributing pictures out here in the Los Angeles area?

A. No, sir. I was employed to do an entirely independent piece of work, bringing my specialty to bear, rather than the opinions of the theatre people per se.

Q. So if a man who had 30 years' experience in the industry distributing Paramount pictures in this territory were to say in these words: "By no stretch of the imagination do we feel that the Paradise is competitive to the Southside," the man who was responsible for the distributing of Paramount

(Testimony of Cecil L. Dunn.)

pictures, if he were to say that that wouldn't affect your opinion? A. Not in the least.

Q. As a matter of fact, if all of the major distributors were to get on the witness stand and state, men who had spent 30 or 40 years in the business and all of them said, "By no stretch of the imagination would the Paradise be deemed competitive to the Southside," that still wouldn't affect your opinion? [2512] A. Not at all.

Q. Now, I think you testified that there was quite a distinction between a theoretical economist and the kind of thing you do, is that right?

A. Yes, there is.

Q. That is these people work in theories and you work with practical facts, is that right?

A. I think that is right, yes.

Q. Now, one of the things you said yesterday was, I think, that in talking about it generally, what would be good business for distributors using an exclusive policy of some kind, if they could do that, that would bring more profit to a distributor. Is that right? Is that one of the things you say today?

A. Yes, I think in general I indicated that was the case. [2513]

Q. Now, do you have your work sheets on the profits on pictures by any of the distributors in this case? Do you have any work sheets on that?

A. No, I don't.

Q. You don't have any work sheets at all?

A. No.

(Testimony of Cecil L. Dunn.)

Q. Do you mean you have never seen the profits of a distributor on a picture sold in the Los Angeles area? A. Yes, I have.

Q. Where are those work sheets?

A. I do not have them available.

Mr. Westbrook: Counsel, as you know, the sheets showing the national film rentals and the Los Angeles exchange territory rentals are right in the files here.

Mr. Corinblit: I know that, Mr. Westbrook. Mr. Dunn said profits. He didn't say gross receipts. He said profits.

The Court: Don't argue with counsel now.

Mr. Corinblit: Yes, sir.

The Court: You are cross examining this witness, not cross examining counsel.

Q. (By Mr. Corinblit): Mr. Dunn, do you have your work sheets showing the profits that Loew's, for example, realized on any pictures in this area?

A. I have never made any work sheets calculating the [2514] profits of Loew's.

Q. Have you ever seen—— A. Surely.

Q. ——the net profit Loew's realized on a particular picture?

A. On a few, yes, from time to time.

Q. What pictures did you see?

A. I can't recall offhand, Mr. Corinblit, any particular picture made by Loew's. As a matter of fact, I can't even say that I am sure that I have ever seen a summary of Loew's profits on a particular

(Testimony of Cecil L. Dunn.)

picture. I have, however, seen them on the pictures made by other producers.

Q. The profits? A. Right.

Q. Picture by picture in this case?

A. No, not in this case.

Q. Did you see them in other cases?

A. No. As a matter of fact, the occasions on which I have had access to that information have not been related to litigation of this kind.

Q. Not related to litigation at all?

A. That's right.

Q. You know there has been testimony in this case that after we filed this lawsuit a number of film companies have gone to multiple day and date, don't you? [2515]

A. No, I don't know that.

Q. You don't know that?

A. No. I haven't reviewed the balance of the testimony in this matter, Mr. Corinblit. I have been concerned primarily with my own.

Q. Do you know whether or not since 1951 every single film company has gone to multiple day and date policy? Do you know that, one way or another?

A. No, I don't know that. I have seen some evidence of some changes of this character, but, Mr. Corinblit, I do not know, I do not follow the motion picture industry day by day, week by week, or even year by year.

Q. I understand that, Mr. Dunn. I am trying to

(Testimony of Cecil L. Dunn.)

find out the facts. You testified you are a man who deals in facts, and I am trying to get the facts.

A. But I deal with the facts which are germane to the conclusion I am trying to reach, and not the whole ambit of facts in the motion picture industry which may or may not be related to the thing I am trying to test.

The Court: May I interrupt?

Mr. Corinblit: Certainly.

The Court: I thought I understood you to say it is your opinion a single run first run was better for the distributors.

The Witness: I am definitely of that opinion.

The Court: That is what I thought you said.

The Witness: Surely.

Q. (By Mr. Corinblit): But that was not based——

A. I said there would be certain circumstances in which that could be modified.

Q. We will get to the modification.

A. I am sure we will.

Q. But what I am asking you is whether when you made that statement you had ever made a comparison of what these companies had determined when they went to the alternate policy?

A. No.

Q. You never had seen those figures?

A. No. Completely innocent.

Q. Did you use the word innocent?

A. Yes.

Q. To get clear this degree of innocence, Mr.

(Testimony of Cecil L. Dunn.)

Dunn, not only have you never done any work for theatre companies other than in defense litigation, but you have never owned a motion picture theatre?

A. Happily, no.

Q. You said happily, no? A. Yes.

Q. I take it you have never bought or booked motion pictures. [2517]

A. Right. The word innocent still applies.

Q. You know what the work booking means.

A. Surely.

Q. You have never operated a motion picture theatre. A. No.

Q. I think you have testified that in prior litigation you don't go to movies much.

A. Not very often.

Q. That has been true for a long time, you do not go to movies?

A. I have gone to more of them since drive-ins became available.

Q. Before 1951, you didn't go to movies very much? A. No, not very much.

Q. And when you gave your opinion that it would be better business to have an exclusive as against a multiple day and date, I think you went to the blackboard? A. That's right.

Q. And drew this picture here?

A. That's right.

Q. Now, let's see if I can remember what this picture shows. A. May I tell you?

Q. Yes. First, I want to start with something up here. [2518] A. All right.

(Testimony of Cecil L. Dunn.)

Q. This is \$2.00. A. That is \$2.00, yes.

Q. And you start out with this long column.

A. That represents \$2,000 derived from a thousand people who are willing to pay \$2.00 apiece to see first run exhibition.

Q. First run? A. Right.

Q. Let's stop right there, Mr. Dunn. What were the first run theatres charging in 1951 in Los Angeles? A. I haven't the vaguest idea.

Q. You haven't the remotest idea of that?

A. No.

Q. And you don't know what they are charging now, do you?

A. The last time I went to a first run theatre, what did we pay? \$1.85, I think, something like that.

Q. This figure of \$2.00 could have been \$10, couldn't it, it could have been that, \$10 easily, just as well.

A. Might better have been 50 cents, but as long as the relationships remain the same, the principle is valid.

Q. We will get to those relationships. So that this figure of \$2.00, that figure you kind of cooked up, would you say, as an example? [2519]

A. That's right.

Q. And this figure down here was \$1.00?

A. \$1.00, that's right.

Q. A dollar for—— A. 4,000 people.

Q. 4,000, and this figure of 50 cents, how many people? A. 10,000.

(Testimony of Cecil L. Dunn.)

Q. 10,000 people.

A. Down below there, yes.

Q. So this whole answer—let's go through the answer. You said there would be 1,000 people who would give 2,000. A. That's right.

Q. And 4,000 people, and from them you would get \$4,000? A. Yes.

Q. And 5,000 at 50 cents?

A. 10,000 people at 50 cents.

Q. 10,000 people at 50 cents, would be \$5,000, a total of 11. A. Right.

Q. But instead of having that policy, if you had a policy across the board here of 50 cents and you had the same number of people——

A. Right.

Q. ——the distributor would get \$7,500? [2520]

A. Right.

Q. And the net loss to the distributor would be 3,500. A. Right.

Q. When you gave those figures, of course, you said you didn't know what they charged in Los Angeles in 1950 and 1951. A. Right.

Q. You said you didn't know if they were charging a dollar or more or less. A. Right.

Q. And you hadn't any idea about this 50 cent figure here? A. None at all.

Q. Let's suppose that in fact when they played—let's suppose as follows. In the first place, the first run price actually charged in Los Angeles was about 70 cents, let's suppose that for a minute.

A. All right.

(Testimony of Cecil L. Dunn.)

Q. And suppose when everybody went to multiple day and date down here—how many people are there involved altogether? A. 15,000.

Q. 15,000. Suppose that they all charged 70 cents in that group, just as the one theatre has been charging 70 in [2521] the prior group.

A. That is a complete negation of the principle that is involved.

Q. Let's leave the principles for a moment. Let's take the facts. Let's talk about the facts.

A. All right, let's talk about the facts. That is a complete negation of the principle——

The Court: May I suggest that the witness not argue with counsel.

The Witness: I beg your pardon.

The Court: Your province is to answer questions.

The Witness: But counsel is making an invalid assumption there.

Q. (By Mr. Corinblit): Do you think when I make the assumption that the first run theatres, when they went multiple day and date charged substantially the same admission price, it is invalid?

A. Counsel, you are talking about something which is not illustrated by that diagram, and you are talking about a contrast between an exclusive first run and a multiple day and date run.

Q. Yes.

A. All right. You can't illustrate that with that diagram.

Q. Isn't that what you were trying to show?

(Testimony of Cecil L. Dunn.)

A. No, sir.

Q. I thought you were trying to show how good business it would be for the exclusive first run.

A. Yes.

Q. That is in comparison with what? That is better business than what?

A. That is in contrast with this business of distributing the whole picture right across the board in all the theatres that wanted to take it at the lowest price.

Q. But you don't mean necessarily multiple day and date, is that it, in other words, they would be staggered?

A. You will have to clarify that question.

Q. I will try to clarify it. You were saying if you had an exclusive first run on this basis it would be better business for a distributor than if he played on some other basis.

A. That's right.

Q. I want to know what the other basis was.

A. The illustration there is giving it to enough theatres to produce total patronage of 15,000 people at 50 cents.

Q. Then all this is is arithmetic. You have multiplied a thousand by two, and 4,000 by one, and 10,000 by 50 cents, or whatever it is, that is what you have done, isn't that right?

A. No. I have given the illustration of what happens in [2523] any market in which the product has a sufficient degree of exclusiveness to permit the marketing of it in successive stages.

Q. So, Mr. Dunn, you have used this as a basis

(Testimony of Cecil L. Dunn.)

for what you think would be better business for a distributor, as far as he is concerned, on exclusive first run, is that right? A. Right. [2524]

Q. Now, when you compared the exclusive you compared it to something that is non-exclusive?

A. That is right.

Q. Now, the non-exclusive is multiple day and date, isn't it? A. (No answer.)

Q. Isn't that what it means?

A. Perhaps so, yes.

Q. Let us take it that way then. You compared a situation where if you had spent two dollars for 1000 people you would get and so forth on down the line, you would get these figures?

A. That is right.

Q. But your comparison would not work. Let us put it in a mild way. Your comparison wouldn't work if on the multiple day and date the theatres playing charged the same admission price as they charge regularly for first run, isn't that right—it wouldn't work? A. Oh, not at all.

Q. You say it wouldn't work?

A. It would work. It would work. Of course, what you would have if you were going to play multiple day and date in lieu of first run——

Q. Charging the same admission price.

A. ——charging the same admission price. What you then [2525] would be stabbing at would be the column on the left-hand side of the diagram, where the admission price would be lower and where the

(Testimony of Cecil L. Dunn.)

number of persons attracted would be larger and where the total revenue would be the same.

Q. All right. In other words——

A. Then you go on.

Q. Let us stop there.

A. To your successive steps downwards. In other words, what you are proposing, counsel, is to use not a single theatre with an exclusive first run, but a variety of theatres in which perhaps you can get the same number of seats by charging a lower price. The principle is exactly the same.

Q. In other words, it would come out even on that basis, is that right?

A. No, no, no, you wouldn't because unless you have 100 per cent saturation, unless you are content with your first multiple first run revenues and only then you have to go on to successive runs and still seek the people—the seats that can be sold at lower prices and on wider distribution and unless you do that you are not maximizing the revenue from the picture.

Q. Well, we can do that, Mr. Dunn, either on your theory or the other theory?

A. Surely, you can draw another diagram if you would [2526] like in which the first column would be the short, fat and wide and then below the short, fat and wide column you have some more shorter, fatter and wider columns. But the principle of marketing in successive steps is just as valid under the assumption of a single exclusive first run as under the assumption of a multiple first run.

(Testimony of Cecil L. Dunn.)

Q. And looking at first run only, it is perfectly possible to get just as much revenue out of a group of first runs as you get on the one first run if they charge the same admission price?

A. Theoretically, yes.

Q. Now, I want to turn from theory to facts. Suppose on the first run you only had 2000 seats on the exclusive? A. Right.

Q. And suppose on the multiple day and date you had 50,000 seats. You would get more money out of the multiple day and date first run than you would get out of the exclusive first run?

Mr. Westbrook: Are you assuming the same length of run?

Mr. Corinblit: Sure, one week.

The Witness: That isn't the way it works.

Q. (By Mr. Corinblit): Let us talk about a week's first run, Mr. Dunn.

A. If you have 2000 seats in the exclusive first run [2527] and 50,000 seats in the multiple first run, you obviously have to charge a lower price for the 50,000 seats than you do for the 2,000-seat exhibition.

And if you have 50,000 seats in your multiple first run, you have wiped out a very substantial portion of the successive steps of revenue which you can get by using the exclusive first run.

Q. Now, that is all theory on your part, isn't it?

A. Not at all.

Q. You haven't seen—I asked you before, Mr. Dunn,—you know that in this field these companies,

(Testimony of Cecil L. Dunn.)

every one of them has gone to multiple day and date. They have gone to multiple day and date, every single one of them. They have done it for the last two or three years.

Mr. Mitchell: I object to this as argumentative, and it is not in accordance with the fact when he states those things to the witness and requires the witness to answer on the basis of his statement. It is improper. It is not correct.

The Court: This witness made the statement on direct examination that he thought it was preferable to have an exclusive first run.

Mr. Mitchell: I am not objecting to his cross examination but I am objecting to his statements.

The Court: As I explained to the jury the opinion of an [2528] expert witness is no better than his reasons for the giving of the opinion.

I think this is proper to attempt to show what reasons he had to make that sort of statement.

Mr. Mitchell: I am in complete agreement with your Honor. It is perfectly proper, but what he is doing is making a statement, your Honor, which is contrary to the facts and to make such a statement and ask the witness to answer on the basis of that statement is assuming facts not in evidence.

I am objecting to the form of the question and not to the cross examination.

The Court: All right. Do you object to the statement that all the distributing companies now are using multiple first run?

(Testimony of Cecil L. Dunn.)

Mr. Mitchell: Yes. That is not a correct statement.

The Court: What is the correct statement?

Mr. Mitchell: The correct statement is that they are using some multiple first run and they are using the showcasing of pictures. They are using both.

The Court: May I ask the witness a question. What do you understand by "multiple first run"?

The Witness: Well, multiple first run I would understand would be the initial exhibition of a picture in a market area in several theatres rather than in one. [2529]

The Court: Would you consider, or would it be your opinion or your conclusion if a picture showed in downtown Los Angeles and at the same time showed out on Wilshire Boulevard, that would be a multiple first run in your opinion?

The Witness: Yes. I can see a few reasons why a policy of multiple first run is perfectly logical in the Los Angeles metropolitan area — traffic and parking are two of the major things that would come to my mind. And the growing competition between the motion picture industry and other types of entertainment which I think has made people far less willing to go afield to seek motion picture entertainment than used to be the case.

One factor in point is I would not regard it as illogical at all considering the vast geographic expanse of the area comprehended by the Los Angeles market. It would be a pretty good policy to have multiple first run of certain kinds of pictures as-

(Testimony of Cecil L. Dunn.)

suming that those multiple first runs were logically geographically distributed in what I described the other day as your regional marketing centers. I can see a lot of sense in that.

The Court: Then I suppose you would like to modify your opinion?

The Witness: Not at all. My opinion is just exactly the same. Look, there isn't the slightest difference—may I address myself to the map again. There isn't the slightest [2530] difference between an undertaking to show a picture on a multiple first run basis in let us say Pasadena, Glendale, Beverly Hills and downtown in here somewhere, and perhaps simultaneously in downtown Los Angeles and in Hollywood with an effort to get the maximum number of people into this relatively high priced first column. And the reasons why you do that are I think, in existing circumstances, self-evident.

More people will go to Hollywood from this area than will go to downtown Los Angeles. More people will come into the Pasadena area from out here than will go to downtown Los Angeles or even Hollywood and so on.

But the principle which is involved is exactly the same. On your multiple first run deal you are making one step in the direction of this convenience type of distribution but you are still skimming the cream, you are still trying to get this first high priced paying group, the people who are willing to

(Testimony of Cecil L. Dunn.)

and who enjoy motion pictures exhibited under those circumstances.

But any exhibitor who stops with a multiple first run and says this is the totality of the revenue which I can get out of this picture in the Los Angeles market, has either had a disaster with the picture or else he is throwing away money which he could get.

Mr. Corinblit: Thank you very much, Mr. Dunn.

The Court: Then you think as far as the distributor is concerned, it is perfectly logical for them to go to multiple first run policy?

The Witness: It is proper for them to go to multiple first run policy as long as it bears a rational relationship to the economics—the geography of the market. If a distributor decided “All right, now, I am going to have multiple first run on four theatres on adjacent corners,” why, it wouldn’t make much sense, but as long as he is making a rational interpretation of the information about the market which is available to him, if he is studying population distribution, traffic patterns, ease of traffic flow, convenience of movement and all of that sort of stuff, multiple first run could conceivably be a pretty good idea.

Q. (By Mr. Corinblit): Now, let us just carry that one step further in this rational examination of the market.

I suppose it would be perfectly rational to have—incidentally, you could have as many as 11 and be rational if you circumscribe this whole area—that

(Testimony of Cecil L. Dunn.)

would be all right, wouldn't it, five or six would be all right? A. Oh, sure.

Q. Eight or nine would be all right?

A. Well, if we are going to be precise, let us count them.

Q. All right. In other words, you would have one out [2532] here in, certainly, the Valley?

A. I would say so, yes.

Q. And you could have one in the Pasadena area? A. Right.

Q. Huntington Park area?

A. I am less familiar with that.

Q. Huntington Park is out here.

A. Probably.

Q. You could have one maybe down here in this Watts-Willowbrook area?

A. Not first run, sir.

Q. How about the Inglewood area? That is all right, isn't it? A. Oh, probably.

Q. Beverly Hills is all right?

A. Oh, certainly.

Q. You might go to West Los Angeles—that might be all right? A. I doubt it.

Q. How about Santa Monica?

A. Very doubtful about that.

Q. But other than those—

The Court: You haven't mentioned Glendale.

Q. (By Mr. Corinblit): How about Glendale?

A. Marginal. [2533]

Q. Glendale is one of those regions you mentioned?

(Testimony of Cecil L. Dunn.)

A. That is right, but it is marginal insofar as first run theatres go.

Q. This is one of the regions that you mentioned. Wouldn't that take a first run?

A. I am not saying that. I am saying it is marginal.

Q. Could go either way?

A. The natives of Glendale, of whom I happen to be one, have a horrible tendency to stay at home at night.

Q. I see. All right. I think you gave, Mr. Dunn, a very comprehensive explanation of the fact. What you are doing in part on these multiple day and date runs, you are really carrying out the facts of life in this Los Angeles area by distribution of population, transportation and so forth?

A. Right, just exactly.

Q. And the ease—in other words, people might not be willing to go downtown and pay parking tickets, pay for parking and pay the admission price, but they might if they are out in Pasadena, they might be willing to go to a first run theatre there where they could park on the street or somewhere else?

A. Right.

Q. And in Inglewood, they could do the same thing, people would be much more likely—more people would be [2534] more likely to go there than to go into Hollywood or downtown?

A. Yes.

Q. Now, incidentally, in this—what you have testified to now is after you are through with these eight, nine, ten or eleven first runs—do you know

(Testimony of Cecil L. Dunn.)

how many theatres there are in the Los Angeles area? Have you any idea how many there are?

A. I have heard, but the number escapes me.

Q. What have you heard?

A. I wouldn't want to quote you a figure. It is a large number.

Q. All of these dots here are theatres?

A. Oh, yes.

Q. All the little blue patterns?

A. I am familiar with that.

Q. They are all theatres?

A. They are all theatres.

Q. So you have lots of theatres when you are all through with which to start out and get your cheaper price or revenue, isn't that right?

A. That is right.

Q. Lots of theatres so you could continue on the same process you described?

A. (No answer.)

Q. Now, Mr. Dunn, another thing I think you said [2535] yesterday was if you were going to pick a location of a theatre in the Inglewood-Westchester area you would spot the Academy right where the Academy is? A. That is right.

Mr. Corinblit: And incidentally, counsel, I notice you did not offer in evidence the two-mile circle map.

Mr. Westbrook: It is in evidence, counsel.

Mr. Corinblit: It is?

Mr. Westbrook: Yes.

(Testimony of Cecil L. Dunn.)

Mr. Corinblit: I am sorry. I wonder if I can take a look at it for a minute, please.

Mr. Westbrook: Exhibit Y-1.

Mr. Corinblit: Y-1 in evidence.

Q. Before I go to that, Mr. Dunn, there is one other question I should ask you in the light of this convenience factor that we have mentioned about getting people into the higher—into multiple first runs.

There is a good chance, isn't there, that you will get more people, total people into that multiple first run than if you have it exclusive?

Mr. Westbrook: During what period of time?

Mr. Corinblit: '50 and '51, during one week or two weeks.

Mr. Mitchell: He hasn't been talking about '50 and '51. He has been talking about multiple runs in 1956. [2536]

Mr. Corinblit: This witness has described multiple runs as being two theatres and the record shows that there have been two theatres playing multiple first run in this city since 1934, so I am talking about 1950 and '51.

The Witness: Counsel, to answer your question whether or not you have got more people in would depend among other things upon the price.

Q. (By Mr. Corinblit): Assuming the price—let us assume the same price, you are more likely—

Mr. Mitchell: Same price as what?

Mr. Corinblit: We have one theatre on exclusive

(Testimony of Cecil L. Dunn.)

charging one dollar—all theatres charge one dollar—these multiple theatres around here I think we have had testimony——

The Witness: No, I don't think that follows at all.

Q. (By Mr. Corinblit): What follows?

A. I don't think it follows if all of a sudden you convert a bunch of neighborhood theatres that have not been charging a dollar or community theatres or something who have not been charging a dollar in the way you have described as theatres with multiple first run and jack the prices up to a dollar, you are not going to increase the patronage in the same proportion.

Q. Not in the same proportion but you are going to get more people into 11 theatres than you are going to get into one downtown or one Hollywood theatre, isn't that right? [2537]

Mr. Mitchell: Over what period of time?

Mr. Corinblit: For one week, for one week.

Mr. Mitchell: That doesn't make a comparison of exclusive runs for months. To compare months of run on an exclusive run with one week multiple run is an invalid comparison.

The Court: Objection overruled.

The Witness: I don't think so. I am not in a position to answer that, but it doesn't seem to me it necessarily follows.

Q. (By Mr. Corinblit): You have got 2,000 seats on first run for a week and now you have got 11 theatres playing first run at the same time, and

(Testimony of Cecil L. Dunn.)

as you have just testified, all this convenience comes into play, and a patron out here doesn't have to go downtown. He has now got a theatre within two blocks playing first run where he can go. A patron in Pasadena or in Glendale has now got a theatre that he can go to that is playing first run. You are going to get more people in all of those theatres, aren't you?

A. And probably fewer downtown.

Q. And probably fewer downtown, but the overall is certainly going to be much larger—you don't have any doubt about that, do you?

Mr. Mitchell: Over what period of time?

Mr. Corinblit: One week, one week. [2538]

The Witness: Yes, I have some doubts about that.

Q. (By Mr. Corinblit): You have doubts about that.

A. Yes.

Q. But again, you haven't seen the figures.

A. Counsel, I studied the patronage pattern in a number of downtown Los Angeles theatres in connection with some of these prior cases to which you have alluded.

Q. Yes.

A. And not even the distributors, by whose attorneys I had been retained for that purpose, were willing to believe the data which showed that those theatres, which at that time were playing downtown first runs, were as underpopulated as they were. This was in 1950 and 1951, too, and there was a great dearth of patronage in many of those in-

(Testimony of Cecil L. Dunn.)

stances. I would assume, therefore, that the multiple first run policy which you described would certainly have that effect. All you would be doing, I would think, would be splitting up what I described yesterday as the \$2.00 people, and you may call it the dollar people, if you like, but that would be splitting up the \$2.00 people among the various theatres at which the picture was available.

Sure, on a convenience basis, you might get some more, but it is not going to be a straight proration of the number of seat days by no means.

Q. All right. But it is going to be a substantial increase [2539] in the total number of people.

A. I wouldn't even say that. I think it is more apt to be a splitting up of the total first run patronage.

Q. So that if one week a theatre downtown was doing \$10,000 a week, it is your opinion that on multiple day and date for that first one week, for that one week it would be about \$10,000 a week?

A. Oh, no, that is precisely the opposite of what I said.

Q. How much would it be in comparison, sir, one week?

A. One week would depend upon the number of other theatres that played competitive with it.

Q. Let's assume 11 theatres spotted just as we indicated, for convenience purposes, for the public patronage, all around the area. What would be the comparison, assuming \$10,000 in one week down-

(Testimony of Cecil L. Dunn.)

town exclusive, what would you have to the one week? A. In 10 theatres?

Q. Yes.

A. I am in no position to make an estimate, but it wouldn't be substantially larger.

Q. Wouldn't be substantially larger?

A. No, I don't think so.

Q. Would you change your opinion, Mr. Dunn, if I told you that \$100,000 in one week has happened on multiple day [2540] and date?

A. I would regard myself as better informed, yes, but I would then have to know what picture it was and the circumstances in which it played, and so on. I wouldn't accept that as a general conclusion.

Q. All right. Mr. Dunn, I think yesterday you said that you would locate a theatre where the Academy was. A. That's right.

Q. You testified earlier you have never made a study. A. Never done it before.

Q. You have never done that before. You just took a crack at it yesterday.

A. Not at all, because the principles which are involved in the location of theatres are precisely the principles which are involved in the location of any other kind of business establishment, given the nature of the product that you are selling.

Q. All right.

A. I wouldn't necessarily choose the same location for a hot dog stand that I would for a theatre, nor would I choose the same location, for example,

(Testimony of Cecil L. Dunn.)

of a public utility base, to mention the type of location I have done often.

The Court: But I understood your statement yesterday was that you would choose a location of a theatre even though another theatre was there.

The Witness: Well, I would certainly take into account the nature of the theatre that was there, the nature of the rest of the theatres that were there, the nature of the theatre that I proposed to construct, the kind of policy that I was going to pursue, and so on.

The Court: But that was not the question.

The Witness: All right, sir.

The Court: You said yesterday that you would select that particular location, and I asked you even though——

The Witness: I will stand on that, I would.

The Court: ——there was a theatre there, and you said yes.

The Witness: Yes, I would.

The Court: All right.

The Witness: I would expect to give the other fellow a tough time, but I would still make that choice.

Q. (By Mr. Corinblit): Now, Mr. Dunn, let me ask you a hypothetical question. Suppose you had an area outside of the urban core, a lot of wheat fields around it, the Westchester area. Suppose you were in 1945. There is a proposed development in the Westchester area. Would you put a first run theatre in there? A. No.

(Testimony of Cecil L. Dunn.)

Q. You wouldn't do it? A. No. [2542]

Q. You would probably advise a businessman not to do it if he asked you? A. Yes.

Q. I take it a lot of your advice isn't followed, is that right?

The Court: Well, he was never asked. There is no evidence that he was ever asked.

Mr. Corinblit: All right, your Honor.

The Witness: The only thing that I can say is that I have been re-employed by the same people many times.

Q. (By Mr. Corinblit): I am talking about the theatre business. You wouldn't have located a first run theatre where the Loyola Theatre is?

A. No.

Q. What would you say if I told you that the Loyola Theatre in 1948 earned a greater total profit than the Chinese Theatre on Hollywood Boulevard?

A. I wouldn't be surprised at all.

Q. You would not be surprised at all?

A. No.

Q. That wouldn't change your opinion at all? You still wouldn't advise a business man to locate a theatre in the Westchester area, even if they earned more money than the Chinese Theatre on Hollywood Boulevard?

A. Mr. Corinblit, you told me about wheat fields in [2543] Westchester. Actually it was oat hay.

Q. I beg your pardon? I didn't hear you.

A. Actually, I said, it was oat hay.

Q. Oat hay, I am sorry.

(Testimony of Cecil L. Dunn.)

A. You asked me if I would locate a first run theatre there.

Q. Yes. A. And I said I wouldn't.

Q. You wouldn't do it.

A. I certainly wouldn't. Now you tell me that after the theatre was built and a lot of parallel changes had taken place in the area, some changes made in distribution policy, and so on, that this theatre is making a lot of money. That doesn't surprise me.

Q. I don't know what distribution policy changed in 1945. Do you know of any change?

The Court: Mr. Corinblit, let's get some dates for this witness.

Mr. Corinblit: Yes, sir.

The Court: When was the Loyola Theatre built?

Mr. Corinblit: It opened its doors in October 1946.

The Witness: Still surrounded by hay fields?

Q. (By Mr. Corinblit): Well, you probably know the territory. Was it hay, or whatever you say it was? How would you describe it at that time?

A. It was oat hay at the time.

Q. Oat hay. All right. A. Yes.

The Court: Now, Mr. Corinblit, you said that the Loyola made more money than the Chinese. In what year?

The Witness: Yes, what year?

Mr. Corinblit: All right.

The Court: We are not talking about this year. What year are you talking about?

(Testimony of Cecil L. Dunn.)

Mr. Corinblit: I want to talk about 1948, two years after they opened. I wish I had the other figures, your Honor.

The Court: Your statement is in 1948 the Loyola made more money than the Chinese.

Mr. Corinblit: Yes, sir.

Mr. Mitchell: Of course, that isn't evidence, your Honor.

Mr. Corinblit: We will put that in right now.

The Court: All right. Let's get that in.

Mr. Corinblit: Let's get the evidence.

The Court: We are learning something about economics.

Mr. Corinblit: We will mark this plaintiff's exhibit next in order, the Loyola profit and loss statement for the years 1948, 1949 and 1950.

The Clerk: Exhibit 79 for identification. [2545]

The Court: It can go in evidence. I don't know why it can't go in evidence.

Mr. Corinblit: Yes, sir. We will offer it in evidence, your Honor.

The Court: 79 in evidence.

The Clerk: Exhibit 79.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit No. 79.)

Mr. Corinblit: We will next mark for identification and offer in evidence as plaintiff's exhibit next in order the profit and loss statement of the Chinese Theatre. I have, your Honor, on three sheets the

(Testimony of Cecil L. Dunn.)

period from 1940 to 1951. I will offer the whole thing in evidence.

The Court: In evidence.

Mr. Corinblit: Thank you, your Honor.

The Clerk: Exhibit 80.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit No. 80.)

The Court: Now you can tell the witness what the figures are.

Mr. Westbrook: May I see them first?

Mr. Corinblit: Certainly, and here are the Chinese.

Q. Mr. Dunn, I want to read to you these figures. The Loyola Theatre for the 12 months ending December 25, 1948, made a net profit— [2546]

Mr. Westbrook: Will you also read the gross admissions?

Mr. Corinblit: Just a minute. You let me get the profit and then we will get the gross admissions.

\$142,056.68.

The comparable figures for the Chinese to December 25, 1948, \$120,653.97.

The Loyola Theatre made \$22,000 more than the Chinese in 1948.

In 1949, the Loyola Theatre had a net profit of \$134,985.

The Chinese Theatre had a net profit of \$122,477.91.

In excess of the Chinese, to the benefit of the Loyola, there was about \$12,000.

(Testimony of Cecil L. Dunn.)

In 1950, the Loyola had a profit of \$86,478; the Chinese Theatre for the same period had a net profit of \$52,436, so that the difference in 1950 is approximately \$32,000.

Q. Now, Mr. Dunn, would you change your opinion?
A. Not in the least.

Q. As to location.

A. Not in the least. Let me ask you a few questions, counsel.

The Court: I am sorry, but you cannot.

The Witness: Then let me give a longer answer.
I [2547] gave counsel a——

Mr. Corinblit: Your Honor, I don't know whether——

The Witness: I want to say why I wouldn't change my opinion.

The Court: Just a minute.

Mr. Corinblit: Yes, your Honor. I think the answer speaks for itself. I am sure Mr. Westbrook on re-examination will give Mr. Dunn full opportunity to argue the case, but I think the answer is sufficient.

Mr. Mitchell: Can't he explain his answer?

The Witness: I want to explain my answer, if I may.

The Court: Just a minute, please. Did you have something to say, Mr. Mitchell?

Mr. Mitchell: Is it not permissible that he explain the answer?

The Court: Yes, and Mr. Westbrook, were you getting up to say something?

(Testimony of Cecil L. Dunn.)

Mr. Westbrook: I didn't mean to get up at the same time Mr. Mitchell did.

The Court: You have answered the question yes. Do you want to explain?

The Witness: Yes. In the course of my direct testimony, I gave counsel an example of how you make a meaningful comparison between theatres. It involved such things as a measure of the comparability of the pictures that played in [2548] the two places, as measured by such things as the national rentals, and as measured by such things as the Los Angeles exchange territory rentals.

Whether or not the Loyola Theatre made a larger profit than the Chinese would depend to a considerable extent upon the availability of the pictures which were available to the two theatres.

Then, further, net profit as such is the function not only of the total amount of revenue you get, but the expenses which you incur in the course of your operation.

The Chinese has been known in Los Angeles from the time it was opened as a show case theatre where, I assume, the per seat expenses are relatively high.

The Loyola, although apparently for reasons not known to me was being used, at least at that time as a first run theatre, probably doesn't have the per seat operating expenses which are as high as those of the Chinese.

The mere fact, therefore, that it made a larger profit doesn't seem to me to be necessarily meaningful in this connection.

(Testimony of Cecil L. Dunn.)

The Court: May I ask——

The Witness: But to go back to the—Mr. Corinblit asked me first if given a group of hay fields in Westchester, I would choose that as a location for a first run theatre, and I said no, and now he comes up with some figures which show [2549] that after a theatre had been located there and given by its operators a first run policy, that it was in a period of three years more profitable than another theatre with respect to which he gives me no comparable data.

Then he asks me if I would change my opinion, and the answer is still no. If you give me corn fields, wheat fields or oats, I wouldn't locate a theatre in them. [2550]

The Court: May I ask a question?

When you said that you would locate a theatre at a certain spot, you were considering the question of profit, how much the theatre could make, isn't that right?

The Witness: That is right.

The Court: If you didn't think a theatre could make a profit you wouldn't recommend a location.

The Witness: That is right.

The Court: Even though it had a big gross.

The Witness: No, wait a minute. The question of a location is prospective. It gives an existing situation and says, "Will you go here?" Information developed after the fact. The fact that somebody did locate a theatre there and then being able to control its policy he was able to give it satisfac-

(Testimony of Cecil L. Dunn.)

tory availabilities which made it profitable. But that isn't germane to the question at all—not in the least.

The Court: What I asked you is this: When you come to locate a theatre the thing you are interested in is whether or not the theatre would make a profit.

The Witness: That is right. And I would gauge that estimate upon such things as the immediately available population, the potential movement of population, which would make the site of the theatre readily acceptable.

I would think about such things as competition with other theatres and so on. [2551]

The Court: Mr. Witness, I think Mr. Corinblit has some very interesting figures to submit to you.

All right, Mr. Corinblit.

Q. (By Mr. Corinblit): There are two things you said, Mr. Dunn. There were two things which you said that I thought might explain this Chinese-Loyola matter. The first thing you said was pictures, didn't you? A. That is right.

Q. Do you know that the Chinese and the Loyola played every single—played exactly the same pictures? A. No, I didn't.

Q. You didn't know that when you made that answer?

A. Look, Mr. Corinblit, you are asking me now, or, rather, you are talking now about a situation

(Testimony of Cecil L. Dunn.)

which existed after the time that you asked me to locate the theatre. You asked me about the location of a theatre in the middle of an oat field, and I said no.

Then you in your question said that somebody did locate a theatre there. All right. The theatre made money. The theatre made money because the oat field disappeared. You didn't give me that condition. You asked me if I would locate a theatre in the middle of an oat field, and now you are asking me whether or not I know anything about what has happened in the Chinese or in the Loyola or anything like that at any time after—that is, after the fact. You asked [2552] me about theatres in an oat field, and my answer was no. If you ask me about a theatre in some rational location——

The Court: Mr. Corinblit, unless you are going to show the witness an exhibit I suggest that you stay at the lectern.

Mr. Corinblit: I was about to show him an exhibit, but it doesn't matter because the witness is not familiar with the facts.

Q. (By Mr. Corinblit): But let me say this, Mr. Dunn, about this point. It is in evidence. At that time the evidence shows that the Chinese Theatre and the Loyola Theatre, since the day that the Loyola Theatre opened in 1949, have played the identical pictures, with the rarest possible exceptions—that is, it has happened not more than probably three or four per cent of the time; outside of

that the Chinese and the Loyola have played the same pictures.

Does that change your answer at all?

A. Hasn't the slightest bearing.

Mr. Mitchell: That is not true at the present time at all. The evidence shows it is not true.

The Court: '48, '49 and '50.

The Witness: It hasn't the slightest bearing on whether I would locate a theatre in an oat field.

The Court: It is 12:00 o'clock and that may not have any bearing on this case, but it is time, I think, to take [2553] another recess.

We are about to take another recess, ladies and gentlemen, and again it is my duty to admonish you not to discuss this case with anyone. You are not to permit anyone to discuss it with you, and you are not to formulate or express any opinion as to the rights of the parties until this case has been finally submitted to you.

With that admonition we will now recess until 2:00 o'clock.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m. of the same day.) [2554]

August 8, 1956, 2:00 o'clock, p.m.

The Court: Is it stipulated the jury is present in the box?

Mr. Corinblit: So stipulated, your Honor.

The Court: You may proceed.

Mr. Corinblit: Thank you, sir.

CECIL L. DUNN

the witness on the stand at the time of the adjournment, having been heretofore duly sworn, was examined and testified further as follows:

Cross Examination—(Continued)

Q. (By Mr. Corinblit): Mr. Dunn, one of the jobs you did for, I think Loeb & Loeb, defense counsel, was in connection with the Markoy case. I think you said that you did some studies to show the area of draw of the downtown and Hollywood theatres. A. That's right.

Q. That involved trying to find out where the people who went to the downtown and Hollywood theatres came from. A. Right.

Q. Do you know how many people came from the Westchester area under your survey?

A. No, I don't. [2555]

Q. You have no recollection? A. No.

Q. You understand that point has been raised in this case? A. I was not aware of that.

Q. You didn't know that? A. No.

Q. Have you got that survey in your office?

A. No, I haven't.

Q. You don't have those figures?

A. No, I don't, unfortunately. Now, wait a minute. I may be answering that incorrectly. I may have, but I think Loeb & Loeb have them.

Q. Loeb and Loeb have them, you think?

A. Yes.

Q. All right. If I asked you how many people

(Testimony of Cecil L. Dunn.)

came from Inglewood, you would give the same answer, you don't remember?

A. I couldn't answer any detailed questions about it.

Q. Do you remember it well enough to say that the number that came from Westchester was probably infinitesimal? Do you remember that?

A. No, I don't remember. I have no idea at all.

Q. No idea.

A. I can remember what the general pattern of distribution [2556] looked like for both the downtown and Hollywood theatres, but it was a long time ago.

Q. Incidentally, on that point, you remember that pattern of distribution showed an overlapping, didn't it, between downtown and Hollywood?

A. Yes.

Q. If you were to draw the same kind of arcs between downtown and Hollywood, this so-called football field would probably be three-quarters of a circle, isn't that right? Do you know what I mean or am I confusing you?

A. Yes, I know what you mean, but I don't think it would be quite as large as that, but here, sir, I am going simply on a very vague recollection of what those maps looked like. I wouldn't like to make a specific statement.

Q. You don't have any doubt in your mind that downtown and Hollywood were in substantial competition?

A. Not at all.

(Testimony of Cecil L. Dunn.)

Q. They were in substantial competition?

A. Yes.

Q. You know that for a long period the Hollywood and downtown theatres played day and date with each other first run.

A. Yes.

Q. I take it your study showed that there was some draw from the Culver City area and downtown and Hollywood. [2557]

A. That's right.

Q. And you know that there have been, as far as Universal pictures are concerned, for example, that they played day and date Culver City, downtown and Hollywood and other areas?

A. Yes.

Q. You know the figures show that there was some draw from the Studio City area in the Valley into Hollywood, you know, and downtown?

A. I think so, yes.

Q. You know as far as Universal pictures are concerned, they played day and date in the Studio City area.

A. That's right.

Q. With downtown Hollywood?

A. That's right.

Q. Certainly you remember that the overlapping was considerable as to Wilshire Boulevard, as well as downtown and Hollywood, when they played first run in the Wilshire Boulevard area?

A. Well, I wouldn't wish to make a generalization, because the patterns shown by the individual theatres varied somewhat. I think the general conclusion is reasonable, yes.

(Testimony of Cecil L. Dunn.)

Q. You don't have any doubt that Wilshire Boulevard and downtown and Hollywood were in substantial competition with each other first run.

A. No.

Q. You know that they did play day and date?

A. On certain product, yes.

Mr. Corinblit: Now, then, I would like to have in evidence, so we can have some comparable figures, the Academy Theatre profit and loss statements. I offer the Academy Theatre profit and loss statements for 1948, 1949 and 1950.

The Court: They may be received in evidence.

The Clerk: Exhibit 81.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit No. 81.) [2559]

Mr. Corinblit: One more profit and loss statement, your Honor, and I will be ready to proceed.

I want to offer in evidence at this time as Plaintiff's exhibits next in order the profit and loss statement of the Ritz Theatre from 1948 on—from 1948 to 1951.

I want to offer as plaintiff's next in order a profit and loss statement of the Wilshire Theatre from 1948 to 1951, and a profit and loss statement of the Uptown Theatre from 1948 to 1951.

The Court: They may be received in evidence as Plaintiff's Exhibts 82, 83 and 84.

(The documents referred to were marked

(Testimony of Cecil L. Dunn.)

Plaintiff's Exhibits 82, 83 and 84, and received in evidence.)

Mr. Corinblit: I am removing the parts other than the years I have enumerated.

Q. Now, Mr. Dunn, I think you testified yesterday about a circle theory of drawing area depending upon what runs were involved—that is something that goes like this.

You have got a circle maybe that big on first run. This is not in proportion, you understand, and a circle for 7 days and maybe a smaller one for 14 days.

Now, applying that—withdraw that. Is that what you understand? Is that your opinion as to the fact that a first run theatre draws from a wider area than a 7 day theatre draws from and a smaller area that a theatre draws from on [2560] 14 day?

A. Yes.

Q. That is your opinion? A. Yes.

The Court: You will have to speak up.

The Witness: Oh, excuse me, oh, surely, it is.

Q. (By Mr. Corinblit): Is that your opinion in the Inglewood-Westchester area that the Loyola Theatre when it played first run drew from a wider area than the Academy drew—that the Academy Theatre drew from a smaller area on 7 days and the Fox-Inglewood Theatre drew from a smaller area on a 14 day?

A. I think that would follow.

Q. That is your opinion? A. Right.

(Testimony of Cecil L. Dunn.)

Q. Do you remember you prepared some maps in the Baldwin case, one of the maps you have got here, the Academy map, is that right?

A. That is right.

Q. And you gave some opinions in that Baldwin Theatre case about the Loyola and the Fox and the Academy. Do you remember that?

A. That is right.

Q. Do you remember what opinions you gave then? A. No, I don't. [2561]

Q. In 1951? A. No, I don't.

Q. Now, let us first talk about the Academy Theatre.

You recall you testified in that case that the area of draw would be on 7 day run approximately four miles? A. That is right.

Q. Is that right? A. Yes, sir.

Q. That is on the 7 day run.

Mr. Westbrook: May I have the page reference, counsel?

Mr. Corinblit: 3023.

Mr. Westbrook: Is that the printed page or typewritten page?

Mr. Corinblit: Printed page.

Mr. Westbrook: May I have the typewritten page number? It is indicated in the index.

Mr. Corinblit: Yes. I think approximately 3268.

Q. Now, I want you to read, Mr. Dunn, your testimony beginning on page 3022 with respect to the Fox Theatre in Inglewood, and running over to

(Testimony of Cecil L. Dunn.)

3023 at the end of your answer which I mentioned before. Those are the last three words which I mentioned.

(Handing pamphlet to the witness.)

The Witness: Yes, sir.

Mr. Corinblit: All right. [2562]

Q. Now, were you asked those questions and did you give those answers? A. Yes, I did.

Q. And were those answers true and correct when you gave them? A. Surely.

Q. All right. Now, I want to call your attention then to the last answer. Well, perhaps I will have to read the entire thing. [2563]

“Q. Will you state the results of your study and your opinion with regard to the patronage of the Fox Theatre in Inglewood?”

“A. This represents 1600 individual patrons whose addresses were obtained on Thursday, the 7th, and Saturday, the 9th of June. The distribution is some what wider again. There is no quarter square mile in which there are more than four per cent.

“The symbolism of the yellow and the green blocks is again as heretofore.

“The shaded area, which is quite concentrated around the central axis, contains 45.8 per cent of the total patronage, and again the grouping along the principal lines of travel is noticeable. In this case the extension in the southerly direction is along Hawthorne Avenue. I think particularly to be noted

(Testimony of Cecil L. Dunn.)

is this scattering of patrons in the Westchester area and so on.

“There is also a good scattering of patronage to the east of the theatre, made possible by the travel along Slauson Avenue, and to a less extent along Florence, and to even a less extent along Manchester Boulevard.

“Again, in the next quadrangle, is the line of traffic, and in this area there is a very small [2564] percentage, amounting to 2.3 per cent of the total.

“The Court: What radius would you get there for the patronage?

“The Witness: And again, the bulk of the patronage in this instance would be, certainly 85 per cent of it, contained within the four miles which I mentioned before.” [2565]

Q. (By Mr. Corinblit): So 85 per cent on the 14 day availability of the Fox Theatre was within a radius of four miles, is that right?

A. That's right.

Q. That was the same radius of four miles for the 7 day theatre and the Academy Theatre, different areas, but still four miles?

A. You will note the reference in the transcript from which you have read to the southerly extension on Hawthorne Avenue. That was particularly the case in the case of the Fox Theatre. There was that long prolongation, that extension of the patronage of that theatre, and in that instance it gave us a somewhat wider, called for somewhat greater radius in this.

(Testimony of Cecil L. Dunn.)

Q. So that in this case the radius was how far? Four miles? A. That's right.

Q. For the 14 day availability? A. Yes.

Q. Now, as a matter of fact, you were asked in that case about the area of draw of the first run Loyola, weren't you? Do you remember that?

A. I think so, yes.

Q. Do you remember that you testified that the radius of the Loyola, the first run theatre, was also four miles? Do [2566] you remember that?

A. If you say so, I did.

Q. I don't want you to take my word on it, Mr. Dunn. A. Well, let me do that.

Q. You can do that, but just so you are absolutely sure, just read page——

Mr. Westbrook: Counsel, would you give me the page reference?

Mr. Corinblit: Yes.

Q. Read 3270 of the typewritten transcript and page 3024 to 3025 of the printed transcript.

A. Yes, that's right.

Q. So the radius of draw of the Academy Theatre, 80 to 85 per cent, was also four miles?

A. Now, counsel, you have recently referred to the Fox Inglewood and now to the Loyola.

Q. Yes.

A. And your last sentence was a reference to the Academy.

Q. No, no, no. I'm sorry. I meant the Loyola.

A. Right, sure.

Q. Four miles radius, the draw. A. Yes.

(Testimony of Cecil L. Dunn.)

Q. Do you want to change your testimony, then, that you gave yesterday that the radius of draw is larger for first [2567] run than it is for second run and 7 day and 14 day?

A. No, sir. You have already this afternoon or this morning called my attention to the fact that the Loyola playing first run was playing first run simultaneously with the Chinese and with other theatres in the Los Angeles area, so I think the four mile answer for what we might call a multiple, or what I think you have called multiple first run policy is probably reasonable.

Q. I see. On a multiple first run policy, the draw on the first run would be four miles?

A. I don't think I am in a position to make that generalization. My answer runs only to what was actually the case at the Loyola at that time.

Q. All right.

A. But I think the inference isn't too bad.

Q. In other words, the inference is correct with respect to the Loyola at that time? A. Right.

Q. Four miles. A. Yes.

Q. And the inference is correct, four miles for the Inglewood on 14 day availability?

A. It was a fact.

Q. I mean it was a fact. A. Yes. [2568]

Q. It was a fact that it was four miles on the Academy Theatre availability? A. That's right.

The Court: So it doesn't make any difference whether it is first run, second run, or third run?

The Witness: No, no, no.

(Testimony of Cecil L. Dunn.)

The Court: It is all four miles.

The Witness: That isn't the case at all. The situation which counsel has just described is a particular situation which existed as of that time. The Loyola playing first run on this multiple first run arrangement at that time seemed to be drawing in a four-mile radius. Obviously, playing multiple first run, with a theatre located in the Wilshire district and the Uptown, the Uptown Theatre on Western, and what is it—Olympic, or Eighth, around there some place, the radius of draw was considerably restricted.

A further factor, which I think we must always take into account, was the character of pictures that were being played. Perhaps the so-called first run attractions at the Loyola at that time didn't have the drawing power that the competing theatre had. I wouldn't say. I certainly would not say that it makes no difference.

I simply say that, as I said at that time, the Loyola playing a multiple first run policy seemed to have the bulk of its patronage concentrated in about a four-mile area. [2569] What the Loyola might have done had it been playing exclusive first run is something on which I am not prepared to speculate.

Q. (By Mr. Corinblit): So that in the Baldwin case you testified that the first run is four miles, the 7 day is four miles, the Academy, and the 14 day availability, the Fox Inglewood, was four miles?

A. No, I didn't testify to that at all, counsel. I

(Testimony of Cecil L. Dunn.)

testified in the particular instance of the Loyola playing, as you have described it, on multiple policy, that that seemed to be the case. There were a number of reasons.

You will remember that my opinion with respect to the Loyola was not based upon a market survey of the character which is represented by this map here, which represents the draw of the Academy. That was simply an inference which I drew at the time based upon a variety of factors, including the geography of the region, and so forth. The other statements which I made with respect to the four-mile draw, however, were specific determinations.

Q. And that is with reference to the Academy and the Inglewood?

A. Right. The generalization which you are making here is not one which I can support.

Q. Let's turn to this Academy and Inglewood.

A. All right.

Q. You did make at that time on the basis of maps the [2570] determination that the draw of the 7 day was four miles and the draw of the 14 day was four miles.

A. That seemed to be true at that moment, yes.

Q. Now, in this case, Mr. Dunn, you testified that the draw of the 14 day is two miles.

A. What I have said is that the draw, the circle of the draw tends to diminish as the availability declines. As you get the subsequent runs, it gets smaller and smaller. Now, if it were true, and it was true, that the patronage of the Fox Inglewood

(Testimony of Cecil L. Dunn.)

at that time, 85 per cent of the Fox Inglewood at that time was contained in a four mile circle, it simply is an accident of that particular determination. The size of that circle was specifically increased by the unusual prolongation of the distribution of the Fox Inglewood patronage in a southerly direction along Hawthorne Boulevard, which tended to make that circle a little larger than would otherwise have been the case.

I am quite convinced that in general my view that the circle gets smaller as the runs get later is a good one.

Q. I can see that you are convinced and you want to stick to your conclusions. I am addressing myself to the facts upon which you base the statement. As I understand it, in this case it is your positive testimony that on 14 days the draw is approximately two miles in the Inglewood-Westchester area. [2571]

A. I have said two to two and a half miles.

Q. Two to two and a half. A. Yes.

Q. But in the Baldwin case you said, and as of the same time, 1951, when that survey was made, that the draw of a 14 day theatre was four miles.

A. A 14 day theatre in a precise instance, yes.

Q. I am talking about precise instances. I am talking about the Inglewood-Westchester area, no other area, Mr. Dunn. You understand that?

A. That's right.

Q. Now, you said in a precise instance, a 14 day

(Testimony of Cecil L. Dunn.)

availability in the Inglewood-Westchester area, the draw was 4 miles.

Now, in this trial you say in a precise instance the draw of a 14 day availability is two and a half miles to two miles.

I want to know which is the correct answer.

A. Both answers are correct.

Q. It is both two to two and a half and four miles?

A. No, no. Just let me tell you why both answers are correct. The specific answer to which you are referring related to the Fox Inglewood. It had that unusual radius, shall I say, on account of this displacement, this prolongation of its patronage in a southerly direction along Hawthorne Boulevard. [2572] In that case, yes, 85 per cent of the patronage was included in a four mile circle.

But in general, and not resting the conclusion solely upon the particular case of the Fox Inglewood, in general the draw of a 14 day theatre is less than the draw of a 7 day theatre, and, further, the draw of a 21 day theatre is still less than that. That is the general proposition and that is true in my judgment. [2573]

Q. You drew a map for the Fox-Inglewood just like this map you drew here—for the Academy?

A. Yes, I did.

Q. Right? A. Yes.

Q. The same map with little dots on them?

A. That is right.

Q. Same kind of a thing? A. Same thing.

(Testimony of Cecil L. Dunn.)

Q. In that case? A. Yes.

Q. But you say that map was a distortion of the true picture?

A. No, sir, no, sir. It was not a distortion of the true picture.

Q. It was not a distortion?

A. No, it was a true picture of what we learned about the Fox-Inglewood and in the case of the Fox-Inglewood instead of having a fairly closely concentrated area like we have in many instances, there was a considerable prolongation of the patronage down along Hawthorne Boulevard.

Now, therefore,—look, may I draw you a picture, please?

Q. Yes.

A. If we have a concentration of theatre patronage like this, which is more or less uniform around the center, [2574] you can contain it within a figure which is, generally speaking, a circle. But if for some reason like the existence of Hawthorne Boulevard, like the existence of a streetcar system which in those days existed on Hawthorne Boulevard, and may have had some effect in drawing the patronage from the Hawthorne area in the Inglewood area, you get what looks like an egg shape or somewhat more nearly egg shape distribution in order to contain all of that within the circle.

You remember the circle is just a convenient figure for describing this thing. You have to draw a bigger circle.

Now, what was true in the Fox-Inglewood situa-

(Testimony of Cecil L. Dunn.)

tion isn't necessarily true of theatres in general if they exist.

Remember, please, these other factors which I have tried to stress, the availability of transportation, the lines of movement of traffic, the distribution of population and so on.

All of those things will influence it and the size of the circle you draw will be governed to some extent by that and in this instance that was true.

Q. Now, this two or two and a half mile draw on 14 days—there is a two or two and a half mile draw on 14 day availability, is that true?

A. That is right.

Q. Now, do you know, Mr. Dunn, in that case it has been established by the play-off of the Paradise Theatre—I will withdraw that question. [2575]

If you draw a circle—when you say that the draw of a theatre is two miles, you mean on the 14 day? You mean that a customer outside the two miles—that is a resident outside the two-mile area is probably not a customer of—a prospective customer of the theatre when it is playing on 14 day availability? A. He is a less probable customer.

Q. Less probable customer? A. Yes.

Q. Now, that same customer located just outside the two-mile area but within the four-mile area is probably a customer where the theatre is playing on a 7 day availability?

A. Somewhat more probable customer.

Q. More probable? A. Right.

Q. Now, I want you to note in the Paradise, the

(Testimony of Cecil L. Dunn.)

situation of the Paradise in almost every instance that you went into with Mr. Westbrook, when the Paradise played a picture, the top half of a bill on the 7 day availability, the second half of the bill was on a 14 day availability or a 21 day availability.

Now, I want you to tell me what happens to that customer who lives outside the two-mile area, who was a possible customer for the 7 day availability, but not such a likely possible customer for the 14 day picture when they are both [2576] playing on the same bill.

A. I don't think I understand your question. I am sorry, sir.

Q. You testified that if a customer lives within two miles, if he is within four miles, he is a likely customer for the Paradise Theatre. For example, if it played a picture on the 7 day availability, right? A. That is right.

Q. However, if the Paradise played a picture on the 14 day availability and the customer lived more than two miles but less than four miles, he wouldn't be so likely a customer?

A. That is right.

Q. That is right? A. Yes.

Q. I want to know what happens to that customer when the Paradise plays a picture on the 7 day availability at the top half of a bill and on the 14 day or 21 day on the second half or the bottom half of the bill. A. I can't tell you.

Q. That is you have the problem of a customer who is torn both ways? A. That is right.

(Testimony of Cecil L. Dunn.)

Q. He might drive for the 7 day picture, but he wouldn't drive for the 14 day picture, so he is not a possible customer on the 14 day picture?

A. Well, I would say less probable. But are you addressing yourself now wholly to the question of bottom halves of the bill?

Q. I beg your pardon?

A. Are you talking exclusively about the bottom half of a bill?

Q. Yes, for now. I will get to the other later on.

A. I can't answer your question. I am sorry.

Q. From a business point of view, you don't have any doubt that that would be a serious prejudice to a theatre in that kind of situation where a man living between that two and four-mile area—he is too far to go to the 14 day but far enough to go to the 7 day. That would be a serious prejudice in the operation of a theatre.

A. That question seems to me so dependent upon the first run, which I am afraid I don't wholly understand, I wouldn't want to answer that either.

Q. All right. Now, Mr. Dunn, turning to this two-mile or two and a half-mile circle. You testified that the radius of draw on the 14 day availability is two to two and half miles. Now, if you were wrong about the 7 day draw—in other words, if the 7 day draw was really from a two-mile area or a two and a half mile area, your analysis of competition would be changed substantially, would it not, if you were wrong? [2578]

Mr. Mitchell: I object to that as being argu-

(Testimony of Cecil L. Dunn.)

mentative and a hypothetical question, your Honor.

The Court: I think you are arguing with the witness. You can argue to the jury about that question when the time comes.

Mr. Corinblit: I am asking the witness to speculate on a point just as Mr. Westbrook this morning asked him to speculate as to what would happen if the Academy Theatre lost 25 per cent of its profits.

Perhaps I can phrase the question a little differently.

Q. Let us turn to these circles. These circles are four-mile circles, is that right?

A. That is right.

Q. There is one around the Academy and there is one around the Paradise.

Mr. Westbrook: And one around the Southside.

Mr. Corinblit: Yes.

The Witness: Southside and Paradise.

Q. (By Mr. Corinblit): If the radius of your circle were two miles instead of four miles, there would be no football area, would there, overlapping because under your testimony they are 6.8 miles apart?

Mr. Mitchell: That is argumentative, your Honor.

The Court: The objection is overruled. This is preliminary. [2579]

The Witness: Sure, that is right. It is a matter of geometry here.

Q. (By Mr. Corinblit): So, there wouldn't be any overlap if the radius of draw was two miles in-

(Testimony of Cecil L. Dunn.)

stead of four miles between the Southside and the Paradise? A. That is right.

Q. And the same thing would be true between the Academy and the Paradise, wouldn't it, if the radius of draw—they are about four and a half miles apart as stipulated to here, so if the radius of draw were two miles on the 7 day availability instead of four miles, then again those circles wouldn't overlap, would they?

A. No. You can draw any number of circles that wouldn't overlap.

Q. In that situation they would not overlap?

A. No, they wouldn't.

Q. All right. Now, you have testified that on the 14 day availability that is exactly what would happen if the Southside were playing on the 14 day and the Paradise were playing on the 14 day since their area of draw is only two miles. They wouldn't overlap, is that right?

A. The circles wouldn't overlap.

Q. All right. Now, if you were wrong about the 7 day draw and if that 7 day draw was two miles, just like you say the 14 day draw is, then they wouldn't overlap on the 7 [2580] day, would they?

Mr. Mitchell: I object to that as argumentative and a hypothetical question. It is the same question again.

The Court: Objection sustained. We have no evidence here about a two-mile draw on a first run theatre.

(Testimony of Cecil L. Dunn.)

Mr. Corinblit: It is 7 day availability, your Honor. I am talking about 7 days.

Mr. Mitchell: There is no evidence of two-mile draw on 7 day availability. The only evidence is a four-mile draw and that isn't exactly the evidence. The four-mile circle contains, according to the witness' testimony, about 85 per cent of the patronage and outside the four-mile circle as shown by the many red dots the draw of the Academy extends a way beyond the four-mile circle.

The Court: Yes. My understanding of the testimony is that he said 85 per cent of the patronage.

The Witness: Yes, sir.

The Court: Would come within the four-mile area.

Mr. Corinblit: But I am pointing out, your Honor, if Mr. Dunn was wrong and if his circles on the 7 day here as between the Southside and the Paradise or between the Academy and the Paradise were drawn with a radius of two miles instead of four miles on the 7 day availability, they wouldn't overlap.

The Court: The circles wouldn't overlap? [2581]

The Witness: No.

Q. (By Mr. Corinblit): Now, these circles—you are not just drawing circles on the map, are you? You are drawing circles to show something about competition?

A. I am indicating competition. Those circles are based upon the actual distribution.

Q. They are based upon the distribution on this

(Testimony of Cecil L. Dunn.)

map. I don't know what the number of the exhibit is, but this one right here. A. That is right.

Q. Where did you get the figures for that map, Mr. Dunn?

A. You mean those figures on that map?

Q. Yes.

A. Those are the ones I developed myself.

Q. You developed them yourself?

A. Why, surely. That represents our findings in the Academy survey.

Q. All right. Now, when did you take that survey?

A. In May, May 31st and June 2nd, 1951.

Q. On a Thursday and one on—

A. Saturday.

Q. One on Saturday? A. Yes.

Q. How many people did you talk to? [2582]

A. 1683.

Q. In two days? A. Two days.

Q. Do you know how many customers the Academy Theatre had in the year 1950 or '51?

A. No, sir.

Q. Have you any idea? A. No.

Q. For the year 1951, Mr. Dunn, the record in evidence shows that 351,000 tickets were sold at the Academy Theatre. A. Yes.

Q. That is over a period of 365 days. Now, you took a sample on a Thursday and a Saturday when Bob Hope's picture—what was the title of it?

A. The Lemondrop Kid.

Q. The Lemondrop Kid was playing and you

(Testimony of Cecil L. Dunn.)

took that sample and you applied it to the entire 351,000 customers, didn't you? A. Sure did.

Q. You took those two days with the Bob Hope picture *The Lemondrop Kid* and you applied it as a general proposition for the whole period, isn't that correct? A. That is right.

Q. You didn't take any other days of the week or any other period of the season to verify your figures, did you? [2583] A. Didn't have to.

Q. You didn't do it?

A. No, it wasn't necessary.

Mr. Corinblit: I move to strike that portion of the answer out.

The Court: It may go out.

Q. (By Mr. Corinblit): You did not do it?

A. No. The answer is "No, I didn't do it."

Q. Now, you don't know whether or not if you took—you don't know from any experiment whether if you took that same—if you took a sample the following week or the week before or six months before, you don't know from a sample that the result would be the same, do you, from a sample?

A. Not from this sample.

Q. From any sample that you took?

A. Yes. I do not have any sample of this particular problem, but from the general practice of sampling in market research technique, a half of one per cent, which is what we have here would be 1651 out of 351,000 is generally more than ample.

Q. One half of one per cent, you say, is more than ample? A. Surely.

(Testimony of Cecil L. Dunn.)

Q. According to good statistical practice?

A. Yes, sir. It depends upon the stability of the result you get and I described the process by which we had tested the stability of the pattern as the pattern developed.

Q. We will get to that testing process in a minute, Mr. Dunn. A. Yes.

Q. I just want to make it absolutely clear to the jury that in your conclusion you base a statement of the four-mile draw of the Academy Theatre on a sample taken on a Thursday and a Saturday on a single picture, and on no other basis as far as samples are concerned.

A. No other basis as far as the data are concerned.

Q. As far as the samples are concerned, the data. The data is the same thing. A. No.

Mr. Mitchell: It is not the same thing.

The Witness: It isn't the same thing.

Q. (By Mr. Corinblit): Well, no other samples, no other actual factual experiments at the Academy Theatre. A. That's right.

Q. That's all of it right there, in that two day sample, [2585] is that right? A. That's right.

Q. In that sample, Mr. Dunn, do you remember how many people you missed?

A. No, I don't remember how many we missed, but I testified, I believe, that we got the bulk of the patronage.

Q. By the bulk, you mean the majority?

A. Yes.

(Testimony of Cecil L. Dunn.)

Q. Now, it is a fact, isn't it, Mr. Dunn, that this kind of a sample violates every principle of good statistical practice?

A. No. As a matter of fact, this type of sample represents the basic principles of good statistical practice.

Q. You mean it is good statistical practice not to check a result that you obtain from the same picture on two days out of the year and to apply that principle on the basis of a result of one half of one per cent?

A. Surely. How many people out of the United States do you suppose Mr. Gallup interviews?

Q. Now, Mr. Dunn, suppose, and this is kind of an unusual situation, but suppose — did you ever hear of a fan club? Are there fan clubs in the motion picture business? A. Yes, there are.

Q. Suppose there were a lot of people who liked Bob Hope, but they don't particularly like too many other kinds of [2586] pictures, and Bob Hope in this Inglewood-Westchester area was playing only in two theatres. The only place they could see Bob Hope at that time was at the Academy and the Southside Theatres. If you had those kind of people and they went to the Academy that night, that would distort the result, wouldn't it?

Mr. Mitchell: I object to that upon the ground there is no foundation for it. That is an argumentative question.

The Court: Sustained. It is purely an argument.

Mr. Mitchell: Speculation in the extreme.

(Testimony of Cecil L. Dunn.)

Mr. Corinblit: Well, your Honor, this witness has speculated from the moment he got on the stand, and I think I can join with him in the course of speculation.

The Court: Suppose you ask him another question then.

Mr. Corinblit: All right. May I have Defendants' Exhibit Y-3-A and Y-3-B?

(Clerk handing exhibits to counsel.)

Q. (By Mr. Corinblit): I will place before you Defendants' Exhibit Y-3-A and Defendants' Exhibit Y-3-B, Mr. Dunn.

First turning to Y-3-A, this exhibit Y-3 is the result of the computation that you have on Y-3-A, except for this last figure down here, is that right? The last figure is——

A. What is the last figure? [2587]

Mr. Westbrook: The last figure is based on Y-3-B, in accordance with the testimony.

Mr. Corinblit: Y-3-B.

Mr. Westbrook: That's right.

Q. (By Mr. Corinblit): So this Exhibit Y, everything except the last figure is based on Y-3-A?

A. That's right.

Q. And the last one is based on Y-3-B?

A. Right.

Q. These figures here, this percentage, the actual figures are no better or worse than the accuracy of the figures in Y-3-A, is that right?

A. That's right.

Q. Now, if you will turn to Y-3-A; on the first

(Testimony of Cecil L. Dunn.)

page you made a comparison. Well, let me withdraw that for a moment.

Y-3-A really amounts to this, doesn't it? You have taken the pictures that played day and date between the Paradise and other theatres?

A. That's right.

Q. You have taken the first week's gross?

A. That's right.

Q. You have compared the grosses?

A. Right.

Q. If there is something artificial in one of the [2588] grosses or the other, something unusual or artificial, that would distort the picture, wouldn't it?

Mr. Mitchell: Object to it as being argumentative, no foundation for that at this point, simply a hypothetical question.

Mr. Corinblit: Let me withdraw the question.

The Court: Well, it is, but this is cross examination, and if he hadn't used the right figures, it certainly would change the computation. Objection overruled.

The Witness: I didn't understand Mr. Corinblit to imply that we hadn't used the right figures. I thought that by something artificial he was referring again to the presence of the Bob Hope fan club or something of that character.

Q. (By Mr. Corinblit): Well, there are some other things that might be artificial, Mr. Dunn.

The Court: I will sustain the objection now until you define what you mean by artificial.

(Testimony of Cecil L. Dunn.)

Mr. Corinblit: Yes, sir.

Q. If one of the theatres — when you make a comparison between two theatres playing day and date, if one theatre during that week had a prevue and the other theatre didn't, would that distort your comparison, or do you know?

A. I don't know. I tend to stay away from them. Some people probably tend to go to them. I am open minded on the matter. [2589]

Q. You don't understand my question, Mr. Dunn. You know if a theatre advertises a prevue, when it is playing 7 day, that could mean \$800 to \$1,000 gross increase, do you know that?

A. No, I don't know that.

Mr. Westbrook: That is contrary to the fact. There is no evidence of that.

The Court: There is no evidence like that in the record, as far as I know.

Mr. Westbrook: You had prevues at the Paradise, too.

The Court: Not as to what a prevue would bring in.

Mr. Corinblit: I beg your pardon?

The Court: Not as to what a prevue would bring in, there is no evidence.

Mr. Corinblit: All right, your Honor. I am sure the defendants' witnesses themselves won't quarrel with the proposition, but we will get to that.

Q. You know about the impact of a bank night upon the gross receipts? A. No, I don't.

Q. You don't? A. That I really avoid.

(Testimony of Cecil L. Dunn.)

Q. Do you know what the impact upon the gross receipts is if the theatre is playing at the bottom half of the bill [2590] the same picture that it played the week before at the top half of the bill?

A. I would think that would probably tend to diminish the total draw somewhat.

Q. Somewhat? A. Yes.

Q. This business of somewhat, now, if the week before 3,000 people had come to see the picture and the next week those 3,000 people are eliminated from the possibility of going to that theatre, unless they want to see the picture again—is that right?

A. They might be willing to do that in order to see the top feature that was playing the second week.

Q. You don't do that, do you?

The Court: He doesn't even go to the picture shows.

Mr. Corinblit: That's right. So we have got no problem there.

Q. Moreover, if the second feature at one theatre is an A picture, double A picture, and the second feature of the second theatre is a C or a D picture, that is going to affect the gross, isn't it?

A. A, double A, C and D, refer to what?

Q. Well, suppose the Paradise Theatre is playing an A picture at the top half of the bill and a D picture at the bottom, and the Southside is playing two A pictures, one at [2591] the top and one at the bottom?

(Testimony of Cecil L. Dunn.)

The Court: May I ask this witness a question? I don't think he understands.

The Witness: Well, I asked him.

The Court: Do you understand?

The Witness: I asked him what was this A, double A, and so forth. [2592]

Q. (By Mr. Corinblit): Do you know what that means in the business?

A. I have a rough idea but I wonder what you mean.

Q. I would like to know if you have a rough idea? Can you tell us that?

A. I think it is a gradation. I am not sure. It is a gradation of quality or some standard, isn't it?

Q. I think that is about right.

A. Is that the standard you use?

The Court: Do you know the way to tell a grade A picture from a grade B picture?

The Witness: How I would tell?

The Court: Yes, in your own mind.

The Witness: The standard I applied here was the national gross rentals and the Los Angeles exchange territory rentals.

The Court: But you were comparing pictures with the same rentals?

The Witness: Oh, but in selecting the groups of pictures which I compared, when I was striving for a measure of comparability, I went to what is at least for an economist, the objectives—how much money did it make.

(Testimony of Cecil L. Dunn.)

The Court: What is the difference in money between a grade A picture and a grade B picture?

The Witness: I don't know. [2593]

The Court: Or a grade C picture?

The Witness: That is why I was asking Mr. Corinblit if there was some standard in the trade as to whether there was a regular scale or is this just a convenient expression such as 'this four-mile circle.

The Court: I am satisfied this witness doesn't know what you are talking about.

Mr. Corinblit: Yes.

Q. Mr. Dunn, you did prepare Exhibit Y-3-A, didn't you? A. I surely did, yes, indeed.

Q. You went through the Paradise list and you took every picture, didn't you? A. Right.

Q. And wherever they played day and date?

A. That is right.

Q. And you took the other theatre's pictures, too? A. That is right.

Q. But you didn't add to this what was playing on the second bill, did you?

A. I have some information on that, yes.

Q. Well, not on Exhibit Y-3-A, the exhibit in evidence. Did you add them? A. No.

Q. You did not. And as a matter of fact, this whole group of pictures, this whole group of figures hasn't any [2594] reference whatsoever to the comparability of the second features?

A. Yes, yes — no, no. It isn't represented by those figures, but I am satisfied by a comparison

(Testimony of Cecil L. Dunn.)

generally of the rentals which were paid for the second features that the programs were in the main at a standoff.

Mr. Corinblit: Your Honor, I move to strike the portion of the answer beginning with the words "I am satisfied" as being non-responsive to the question.

Mr. Mitchell: He is explaining his answer.

The Court: Motion denied.

Q. (By Mr. Corinblit): Could I hear the last few words of the witness' answer?

(Answer read.)

The Witness: I am satisfied from a comparison of the rentals which were paid for the second features that the programs were in the main at a standoff. In other words, in the absence of any other information as to what might be a measure of the quality of the second feature, I looked at the rentals which were paid for them.

Q. (By Mr. Corinblit): Before we spell that out, Mr. Dunn, let us start with this proposition.

You don't have any doubt that a second feature on a 7 day availability is worth more at the box office than a second feature on a 21 day availability. That is pretty clear in your [2595] mind, is it not?

Mr. Mitchell: The same feature, or do you want him to evaluate a good picture on a 21 day availability with a bad picture on a 7 day availability?

The Court: This witness is an expert on economics and I don't think he has qualified himself as an expert in the motion picture field at all.

(Testimony of Cecil L. Dunn.)

He is testifying from an economist's point of view and not from the question of whether or not a 21 day picture on the second half of a double bill is better than a 21 day picture.

Mr. Corinblit: Well, your Honor, this witness under the examination of Mr. Westbrook purported to make certain comparisons.

The Court: That is right. And he testified as far as the evidence shows, that all he did was to use the top half of the bill. There is nothing there to indicate the second half of the bill was considered.

Mr. Corinblit: Is his Honor's testimony correct?

The Court: It is not testimony.

Mr. Mitchell: That is an improper question.

The Court: The jury is instructed to disregard that.

Mr. Mitchell: I don't think the witness should be put on that spot.

The Court: I am not testifying but I am telling you what my impression of the testimony of this witness is. [2596]

As a general rule, when you talk about revenue or gross receipts of a theatre the average person gives no consideration to the second half of the bill. It should be considered, but they just don't give any consideration to it.

Mr. Corinblit: Your Honor, I must say, is concluding something about the average person here. I think the testimony is——

The Court: I consider myself to be an average person.

(Testimony of Cecil L. Dunn.)

Mr. Corinblit: And I am myself but the point is I think your Honor stated once in a trial that gross receipts referred to the total bill.

The Court: And it does.

Mr. Corinblit: In other words, you have got to look at both bills in order to know whether or not you have a comparison.

The Court: That is right. And you brought out now in making this comparison that he did not consider the second feature except in his opinion that they were comparable.

Q. (By Mr. Corinblit): Now, when you use the word "comparable," Mr. Dunn—— A. Yes.

Q. ——what did you mean?

A. Oh, I thought that in general the programs which were under comparison were free from these distortions to which you have referred. [2597]

I didn't think that there was anything in the character of the two features which produced distortions of that character.

But let me stress the fact that what we are showing here is what actually happened. I mean whatever the other half of the bill was, this is what happened on the days when these programs were played.

Now, that is all I have purported to testify to here at all, was what actually happened and what that tells me or what opinion that—or what conclusion I reach with respect to competition.

Q. But the reason for your statement, the reason for your statement which is, of course, the most

(Testimony of Cecil L. Dunn.)

important thing for the jury to understand, the reason for your statement has really nothing to do with any knowledge that you have about the value of one second feature over another second feature, isn't that right?

A. The reason for my conclusion about this question of substantial competition arises from my comparison of these actual bills. Whatever they involved second featurewise came from my comparison of the bills.

Now, I think from what I know about the second features and my comparison again is based wholly upon or largely upon a comparison rested on their rental value; that there is no significant distortion in these programs, but the basic [2598] thing is what actually happened, and in this real situation the theatres are in competition.

Mr. Corinblit: Your Honor, I have just a few more matters. This might be a good time for the recess.

The Court: I might say for the benefit of the jury that the cross examination of a witness is not only to bring out additional facts, if you can bring them out, but it is also to discredit the statements previously made by the witness.

Now, if it can be shown that the witness testified differently in another case, then a question of doubt arises as to whether or not the first testimony was correct or the second testimony was correct. And all this rigmarole that we are going through now is for two purposes: One to bring out additional in-

(Testimony of Cecil L. Dunn.)

formation and also to raise a question in the minds of the jury as to the testimony of the witness and as to how much you can believe of this witness' testimony.

Now, I told you before that as to expert witnesses, you don't have to take their opinions at all. You can entirely disregard them or you can accept their opinions in toto, or you can accept part of them or reject part of them.

Now, this witness has been testifying about certain matters that we have been listening to now for nearly 20 days. It is just possible that some of you have come to the conclusion that you know more about the subject than the [2599] witness does, and you may disagree with the witness entirely about his testimony.

So, this is a question of fact for you to decide and you can rely upon this witness' testimony or you don't have to rely upon it. But you are to come to your own conclusions from all of the testimony in the case and not from the testimony of any particular witness.

It is time to take another recess and again it is my duty to admonish you that you are not to discuss this case with anyone and you are not to permit anyone to discuss it with you. You are not to formulate or express any opinion as to the rights of the parties until the case has been finally submitted to you.

With that admonition, we will now recess until 15 minutes after 3:00 o'clock.

(Testimony of Cecil L. Dunn.)

(Short recess.) [2600]

The Court: Stipulate the jury is present in the box?

Mr. Corinblit: So stipulated, your Honor.

The Court: You may proceed.

Q. (By Mr. Corinblit): Mr. Dunn, I think you testified under Mr. Westbrook's examination that—you haven't drawn circles, but Mr. Westbrook asked you whether in your opinion the Southside and the Academy Theatres were in substantial competition with each other. A. That's right.

Q. And there is no question in your mind that that is true, is that right?

A. That is quite right.

Q. As a matter of fact, there are about—I always forget the figure—is it four and a half, the Southside?

Mr. Westbrook: If you are talking about the shortest driving distance, it is four and a half miles.

Mr. Corinblit: Four and half?

The Witness: Yes, that's right.

Q. (By Mr. Corinblit): Four and a half miles apart, so if you drew your famous four mile radius, you would just about come right up to the theatre, so that they would probably overlap about 50 per cent, is that right? That is 50 per cent of the circles.

A. 50 per cent of the radius in the area. [2601]

Q. Yes. So you say that 50 per cent of the circle, four mile circle of the Academy Theatre would overlap about 50 percent of the four mile circle of

(Testimony of Cecil L. Dunn.)

the Southside. You understand that the evidence shows in this case that on, oh, a great many pictures, excluding Loew's, a great many pictures the Southside and Academy play day and date. You understand that to be a fact? A. Yes.

Q. They played simultaneously?

A. Right.

Q. Although it is your opinion that they are in substantial competition with each other.

A. Right.

Q. On the 7 day availability. A. Right.

Q. Incidentally, you understand that the Southside Theatre is a 1500 seat house, you understand that? A. Yes.

Q. As compared to the Paradise being less than that, a little over 1300. A. That's right.

Q. And the Southside, of course, is at—

A. It is Vermont and Imperial.

Q. Vermont and Imperial, that's right.

A. Yes. [2602]

Q. All right. Now, there is between the Southside and the Academy no geographic impediment, is there? A. No.

Q. In other words, it is a straight shot up Manchester—what would it be, to Vermont?

A. Between the Southside and the Academy?

Q. Yes.

A. You can go Vermont to Manchester, across Manchester would be the easiest way to do it.

Q. Across Manchester. A. Yes.

Q. No impediments at all. If you go between

(Testimony of Cecil L. Dunn.)

the Academy and the Paradise, you have got to do things like going by a cemetery between the Academy and the Paradise, if you go along Manchester?

A. You do pass a cemetery, yes.

Q. A cemetery. A. Yes.

Q. And you pass the race track over there, or is that further off?

A. It is actually a golf course that occupies that end of the tract, and there is the race track and the golf course and all.

Q. You have got to go over a railroad track?

A. Yes. As a matter of fact, you go over a railroad [2603] track going from the Southside to the Academy, also, if you go along Vermont Avenue.

Q. If you go along Vermont? A. Yes.

Q. All right. Now, on the 7 day run your chart showed—I don't think you set up that chart. You know that from time to time theatres in downtown Inglewood play day and date with the La Tijera Theatre, do you know that to be a fact?

A. Let me look.

Q. All right. You won't find it on that, if I understand the schedule you are looking at. It is the one that went into evidence. That is the Paradise and other theatres. If you will take the La Tijera, you will find from time to time the La Tijera played pictures day and date with the United Artists Theatre in downtown Inglewood.

A. Yes, that is true. I have some pencil notations here on what was playing in a variety of places. That's right.

(Testimony of Cecil L. Dunn.)

Q. You have no doubt that those theatres were in substantial competition with each other.

A. No.

Q. The La Tijera and the Southside sometimes played day and date, that's right too, isn't it?

A. Oh, yes.

Q. And those two theatres—— [2604]

A. Wait a minute. No.

Q. I think you put in a schedule on that.

A. That's right. Excuse me. That's right.

Q. Is that right? A. Yes, that is correct.

Q. They played day and date with each other?

A. They did, right.

Q. You don't have any doubt that those two theatres are in substantial competition?

A. No.

Q. So throughout this area, throughout this whole area, these companies involved in this case, except for Metro, which had the exclusive arrangement, all permitted theatres, other theatres, other than the Paradise, all permitted these other theatres to play day and date, even if they were in substantial competition with each other, isn't that right?

A. I assume so, yes.

Mr. Corinblit: I have no further questions.

The Court: Mr. Johnston?

Mr. Johnston: I have no questions, your Honor.

The Court: You are not participating in this, are you?

Mr. Johnston: I beg your pardon, sir?

The Court: You are not participating in this?

(Testimony of Cecil L. Dunn.)

Mr. Johnston: Just as a listener. [2605]

The Court: Just as a listener.

Redirect Examination

Q. (By Mr. Westbrook): This morning, Mr. Dunn, Mr. Corinblit on cross examination requested your attention to a number of propositions that he advanced with regard to the playing of multiple runs in the sense that runs played in what you call the regional centers around Los Angeles at various times after—I think the earliest time was 1952, and some distributors didn't do it until 1955, and so on, and some distributors now do exclusive runs on most of their pictures, and so on, but he directed your attention generally to that subject.

Now, having in mind that we were talking about 1950 and 1951 during your direct testimony, and that Mr. Corinblit jumped a period of time here in cross, I would like to ask you whether there were any economic factors present in the Los Angeles area which would bear upon the desirability of playing additional runs in the Los Angeles area during the later periods.

Mr. Corinblit: Object to that question, your Honor. Now that we have had the direct and cross, I think it is clear there is no foundation for this witness' knowledge as to the profits or the way distributors ought to sell or ought not to sell, because he has no knowledge of those subjects. [2606]

The Court: Overruled. I think I know what he is trying to bring out. Overruled.

(Testimony of Cecil L. Dunn.)

The Witness: Yes, I think that in the——

The Court: You can answer that yes or no.

The Witness: Yes, there have been changes.

Q. (By Mr. Westbrook): Will you state those changes?

Mr. Corinblit: Same objection, your Honor.

The Court: Same ruling.

The Witness: The thing which seems to me to be most significant in this circumstance is the considerable change in the overall nature of the Los Angeles market area. In 1951, for example, the total population of Los Angeles County was 4,288,000—222,000. As of now, unbelievably, it is 5,290,000, an increase of more than a million persons in the intervening five years—22½ per cent.

Now, what that means from the standpoint of the growth in importance of these regional centers that I talked about and what it means from the standpoint of the increased difficulty of getting around, the increased traffic congestion, and so forth, I think is self-evident.

There have been, I think, basic changes in the nature of the market area which would have an important influence on the way pictures were played.

Q. What about the general distribution of this new population in the Los Angeles metropolitan area? [2607]

A. Almost all on the outside, and very little of it—as a matter of fact, the downtown area, as we

(Testimony of Cecil L. Dunn.)

discussed it a day or two ago, is actually losing population.

Q. That is in the urban center of Los Angeles?

A. Yes.

Q. There are substantial areas that are losing population?

A. Right, and new population is settling around the outside.

Q. And presumably some of the old as well.

A. Oh, yes, right, a lot of it in fact.

Q. What about traffic considerations as between 1950 and the present time?

A. Of course, the aggravation of traffic conditions in Los Angeles County in the years since the war is something with which I think everyone is familiar. The congestion on all of our major boulevards, including the freeways, is rising at such a rate that the State Highway Commission—well, they just can't keep their program of highway development ahead of the growing problem of traffic.

Transit times, both by private automobile and especially by public transportation, have increased anywhere from 5 to as much as 50 per cent in the last five years. In other words, it takes from a few minutes to half again as long to get between two points in the Los Angeles metropolitan [2608] area as it did five years ago.

Q. Is there any difference between the motion picture market itself in 1950 and 1951 which you observed that does not exist, or if it does exist, exists to a less extent today?

(Testimony of Cecil L. Dunn.)

A. Yes. The motion picture industry at the present moment is in considerably better health than it was in 1951. In 1951 it was experiencing the first heavy impact of competition from television. It was trying to adapt itself to the new problems which arose therefrom. At the present moment it seems to have met the challenge pretty well. I think that the industry is now in a pretty healthy condition. Its practices seem to have steadied down. The general operation is apparently much more secure than it was five years ago.

Q. Along with these factors that you have mentioned, has there been any change in the tendency of other businesses toward decentralization?

Mr. Corinblit: I object to that as being immaterial. The witness testified the difference between the motion picture business and any other business.

The Court: Well, aren't you willing to agree, Mr. Corinblit, there has been a tendency to decentralize business in recent years?

Mr. Corinblit: Your Honor, that tendency began in 1945 and was in tremendous development in 1951.

To state that it is just coming to fruition in 1956 seems to me is contrary to the facts.

The Court: Objection overruled.

The Witness: Yes. I think that the tendency toward decentralization, and I think we can go, so far as Southern California is concerned, I think we can go, Mr. Corinblit, a few years more if you like, sir.

Los Angeles historically, I think, has been de-

(Testimony of Cecil L. Dunn.)

scribed as seven suburbs in search of a city. The pattern of decentralization which is common here for a long while has been, however, tremendously accelerated since the war.

If you think of something like the department store industry, to which we alluded a while ago, I can think of a half dozen major suburban branch department store locations that have been started within the last two years, and that is only one, I think, indication of this pattern of decentralization which is going forward with increased rapidity [2610] all the time.

Q. (By Mr. Westbrook): I wonder if I might at this time have the exhibits that Mr. Corinblit introduced this morning, 78 and 80.

Mr. Dunn, you will recall that Mr. Corinblit read theatre profits from these statements this morning.

I would like now to read into the record for the respective years which Mr. Corinblit referred to, the film rentals paid by the two theatres that he referred to, namely the Loyola and the Chinese.

In the year 1948, which I believe was one of the first he adverted to, the Chinese paid \$169,826 for its programs, as against \$141,179 for the Loyola; approximately a difference of \$28,000 more paid by the Chinese than the Loyola.

In the year 1949 the Chinese paid \$162,000 in film rental against \$124,000 for the Loyola, or that year a larger difference, a difference of \$38,000.

In the year 1950 the Chinese paid a total film

(Testimony of Cecil L. Dunn.)

rental of \$116,704 as against \$82,219 for the Loyola, or a difference of \$44,000.

Mr. Corinblit: What were those figures again, counsel?

Mr. Westbrook: I will pass the exhibits to you, counsel.

Mr. Corinblit: I am questioning your subtraction.

Mr. Westbrook: I will be glad—I am sorry, my [2611] subtraction is off. There is a difference of \$34,000. Thank you very much.

Mr. Corinblit: You are welcome.

Mr. Westbrook: Do you want to check the figures?

Mr. Corinblit: Yes, thanks.

Q. (By Mr. Westbrook): Now, Mr. Dunn, what is the significance of those film rentals in terms of comparison of your testimony with respect to the Loyola and Chinese profits this morning when his Honor asked you a question?

A. The significance of the film rentals, of course, is from the standpoint—is from the distributor's point of view the thing which he is trying to do—the thing which he is trying to do is to maximize the revenue which he gets from renting these films to all the various exhibitors.

In this instance, as I think Mr. Corinblit pointed out this morning, both of these theatres were in the control of the same management and played, I believe he told us, the same bills and consequently it represents a decision on the part of the management

(Testimony of Cecil L. Dunn.)

to divide up the revenue between those two theatres.

Q. Or whatever number they were playing.

A. Or whatever number were at that particular time playing these same programs.

If in their judgment of the situation as it existed in those years, and I am convinced that the economic situation [2612] which governs marketing decisions of every character was different in those years, they chose to make that distribution of availability with the expectation of getting more revenue out of it.

That was the decision for them to make. In any event, we have to assume that if they are choosing that pattern of distribution they are taking into account the fact that the various theatres to which these films are licensed on day and date availability will compete—will bite into the revenue which might be secured from other theatres playing the same bill.

Q. In any event, it is the film rental that ultimately determines the profit to the distributor.

A. The film rental determines the profitability to the distributor.

Q. All right. Now, what part does the profit of the theatre play in determining the desirability or undesirability of multiple runs from the economic point of view?

Mr. Corinblit: Object to that on the ground no foundation has been laid.

The Court: Objection overruled.

The Witness: Doesn't play any part at all be-

(Testimony of Cecil L. Dunn.)

yond the fact that the distributor wants the theatres to be sufficiently profitable so they will stay in business and give him an outlet for his product.

Q. (By Mr. Westbrook): All right. Now, this morning Mr. Corinblit asked you a whole lot of questions which were pretty "iffy" questions with regard to one week all the time.

We asked him to state the period of time he had reference to and he kept saying one week. [2614]

Now, I assume it is correct that in order to consider the over-all desirability of multiple runs there are other considerations other than one week's performance, is that right?

A. Certainly. I think the purport of my diagram which I keep drawing is that the thing in which you are interested is the total amount of revenue that you are going to get over the entire period that the film is available for distribution and not the amount that you are going to get in one week.

I can certainly imagine circumstances in which you could have a saturation short of distribution and get more money in the first week but that isn't what you are after. You are after the maximum total.

Q. All right. Now, with regard to the distinction between multiple runs and exclusive runs or one or two or at most three day and date runs, is there any distinction to be drawn with regard to the length of run?

A. Yes. I think there is in the exclusive run, and now I am speaking both from what I know as

(Testimony of Cecil L. Dunn.)

the ordinary observer of the motion picture market and from what I have been able to see from the play-off records, that in exclusive runs a single theatre or smaller number of theatres, the first run tends to be substantially longer than in the case of multiple first run. [2615]

If you put a film in a single theatre, particularly a downtown or Hollywood metropolitan theatre, a theatre which has prestige, advertise it aggressively, it can be for a long run, whereas dividing it up, divides up the total audience both from the point of space and in point of time and I think characteristically shortens the length of the first run considerably.

Q. What about the size of the drawing area of theatres playing multiple first run as affecting the length of the first run? Does that have any influence?

A. Yes, because a single theatre, particularly a show case theatre, so-called, will have a drawing area comprehending most of the Los Angeles market, whereas several theatres spotted regionally around the area will naturally draw from a smaller total area. There will be fewer people who are in that area who are prepared to pay first run prices and the length of the run will be accordingly shortened.

Q. Is the subject of theatre overhead—does the subject of theatre overhead have anything to do with the length of run?

A. Yes, I think it does when we consider the re-

(Testimony of Cecil L. Dunn.)

relationship between both the returns to the exhibitor, the theatre proprietor and the return to the distributor for his pictures is a situation in which a multiple first run is required to carry the overhead of, say, four, five or ten, to use the [2616] illustration we were talking about this morning, theatres rather than the overhead of a single theatre.

Obviously that is going to affect both of those factors. I keep returning to my conviction which I think the general practice of the industry bears out, that it is more profitable, certainly from the film distributor's standpoint, to license films for exclusive first run exhibition and then go through the series of steps than it is to use the multiple first run practice except in unusual circumstances.

Q. Can you illustrate simply the relationship of overhead to the length of run? A. Well—

Q. Let us assume first an exclusive first run and take a relatively high overhead theatre, say, a theatre with an overhead of \$8000 a week and contrast—

The Court: I am afraid this witness cannot do that.

The Witness: I am afraid—

The Court: This witness has no background for that question.

Mr. Westbrook: I think it is an economical question.

The Witness: I think an explanation could be developed but it might be a little labored.

Q. (By Mr. Westbrook): All right. Now, you

(Testimony of Cecil L. Dunn.)

have mentioned that multiple runs tend to be shorter by some considerable measure than exclusive runs. [2617]

Does that have any effect with regard to the overall performance of a picture from your viewpoint as an economic analyst?

A. Yes, I think it does. There is a great advantage in building up the reputation of a picture, a desire on the part of the public to see it arising from the exclusive first run, particularly to the show case type of showing.

People go to see it on what you might call special occasions. They come home and tell their neighbors about it. The general word of mouth advertising spreads the reputation of the picture and a desire on the part of theatre goers generally to see the picture.

It tends generally to be built up whereas when there is a short run or shorter multiple first run, that process of word of mouth advertising doesn't have the opportunity to grow and to have its effect upon the market for the picture which is the case when a longer first run exhibition is maintained.

Q. Now, does the length of the first run have anything to do with the total amount of revenue produced as on first runs as between multiple and exclusive runs?

A. Yes, when you consider the fact that a first run on an exclusive basis is bearing the overhead of a single theatre it might run for a considerable period of time and as compared to the length of

(Testimony of Cecil L. Dunn.)

runs in multiple first run showings, [2618] the return to the distributor will be considerably increased—I mean will be considerably greater in the first case. [2619]

Q. Now, again, from your experience as an economic analyst, does the concentration of gross admissions in one or two or three theatre outlets as distinguished from nine or ten or eleven, have anything to do with the ability of the distributor to earn film rental on his product?

Mr. Corinblit: Object to that, your Honor. No foundation laid.

The Court: I don't think that this witness has laid any foundation as to the problems of the distributor at all. He can give his opinion as to the location of the theatre and the number of people within the area, and so forth and so on, but now you are talking about an *entirely field*, the field of distribution of motion pictures. He is not a motion picture expert.

Mr. Westbrook: Talking about the economics of distribution, your Honor, which I don't think vary widely from one industry to another, except we are dealing with a unique problem here.

The Court: He testified he didn't go into the question of distribution before. He never looked into the question of distribution. He never examined the records. He knows what the general problem is.

Mr. Westbrook: Let me ask the question this way.

(Testimony of Cecil L. Dunn.)

Q. From a general economic point of view, Mr. Dunn, does the question of overhead of the outlet or outlets you suggest [2620] for your product as a distributor have anything to do with the rate of return on the total business that you can expect to realize?

Mr. Corinblit: Same objection, your Honor.

The Court: Well, that is already in the evidence that it does. Objection overruled. You can answer yes or no.

The Witness: Yes, it certainly does. I think that obviously the lower the relative amount of overhead, the greater the profitability. When you think of the fact that the longer run tends to reduce—the longer run in an exclusive theatre tends to reduce the proportion of overhead to gross revenue, there is a pretty obvious advantage there.

But then all of this, I think, relates to the general nature of the problem with which we are dealing. We talked a little bit about this yesterday, the exhibitor, the distributor of a motion picture is dealing with something which gathers a large, very large proportion of its value, if not all of its value, because it is unique. It isn't like the day-to-day goods that we contrasted it with. Whatever you can do to emphasize and, if you will, to capitalize upon the unique value of the thing you are selling in the way in which an exclusive first run showing does build up the unique value of a picture, you are doing something which is going to make more money. It adds to the attractiveness

(Testimony of Cecil L. Dunn.)

and the prestige [2621] and the reputation of a picture, and through this process of word of mouth advertising, it builds up the exhibitor's revenue, and with it the distributor's revenue considerably.

Q. (By Mr. Westbrook): From the point of view of your experience as a marketing analyst, does the use of multiple first run outlets scattered around the various regional centers you have drawn have any effect with regard to the subsequent exhibition of the picture?

Mr. Corinblit: I object to that, your Honor.

The Court: Now, I think we are getting clear outside the experience of this witness. Objection sustained.

Mr. Corinblit: Thank you.

Q. (By Mr. Westbrook): You mentioned this morning with Mr. Corinblit the proposition that putting multiple runs out in the outside areas might satisfy the convenience of some patrons out in those areas who wanted to attend the picture on first run.

Now, what effect does that have, if any—this is the testimony that Mr. Corinblit had you give—what effect does that have, if any, on the rest of the play-off of the motion picture?

A. Well, if they go—

Mr. Corinblit: Just a minute. Pardon me.

The Court: Same objection, same ruling.

Mr. Corinblit: Thank you, sir. [2622]

The Court: You will have plenty of witnesses here who are familiar with the motion picture busi-

(Testimony of Cecil L. Dunn.)

ness, who can testify from their own knowledge. This witness doesn't have any knowledge.

Mr. Westbrook: Well, I think he brings to bear expert opinion, your Honor, which qualifies him to answer the question.

The Court: His expert opinion is based, probably, on statements he received from the distributors and not from his own experience.

Mr. Corinblit: Or from distributors' counsel.

The Court: I think he is going outside the purview of his experience.

Mr. Westbrook: All right, sir.

Q. Mr. Corinblit asked you some questions, Mr. Dunn, about the effect of a survey which you had made of the Fox Inglewood Theatre in 1951, about the same time you made the Academy survey, which I believe the record shows was on a 14 day availability. A. That's right.

Q. Now, I would like to ask you, did you give consideration to introducing that survey into your study in this case? A. Yes, I did.

Q. As a matter of fact, you examined the survey during the course of your preparation to testify, did you not? A. Repeatedly. [2623]

Q. What was the reason that you decided not to bring it into your study at the present time?

Mr. Corinblit: Object to that, your Honor. What difference does it make why he decided not to bring it in? For reasons satisfactory to them they didn't put it in evidence.

Mr. Westbrook: That is exactly the inference

(Testimony of Cecil L. Dunn.)

counsel is trying to draw and I want to argue the inference, your Honor.

Mr. Corinblit: I object to that question.

The Court: The testimony is he made the survey. Sustained.

Mr. Westbrook: I trust, then, that Mr. Corinblit will not be able to argue our reasons for not bringing it in, your Honor. We are perfectly willing to have that reason stated by Mr. Dunn.

The Court: If Mr. Corinblit argues that, all you have to do is protest and I will tell Mr. Corinblit to stop arguing.

Mr. Westbrook: Thank you, your Honor.

Q. You testified generally as to the results of that survey under cross examination by Mr. Corinblit. I believe you made mention of an extension of the patronage pattern of the Inglewood Theatre down in the Hawthorne area.

A. Yes, I did. [2624]

Q. Were you aware of any particular geographic or other factors in the area at that time that in your judgment and opinion produced that result?

A. Yes, I am.

Q. Will you state what they were?

A. Well, essentially, I think they lie in the fact that along Market Street and Hawthorne Boulevard at that time the Los Angeles Transit Line streetcar system was operating. Hawthorne is a relatively, and in the adjacent territory, Lennox, and whatnot, is a relatively low income area as compared to some of the rest of this region, and I am

(Testimony of Cecil L. Dunn.)

inclined to believe it is accounted for by the fact that people here got on the streetcar or drove up Hawthorne Boulevard and went to theatres in downtown Inglewood.

Q. I believe when you testified you used reference to the four-mile radius as containing 80 to 85 per cent of the patronage in the Inglewood area with respect to the Fox Inglewood because of that southerly extension of patronage?

A. That is correct.

Q. If you exclude that southerly extension down Hawthorne Boulevard, within what radius would the bulk of the remaining patronage of the Fox Inglewood fall on that survey?

Mr. Corinblit: Your Honor, I object to that question as calling for a change in the witness' testimony. He has testified fully with respect to it.

The Court: Overruled.

Mr. Corinblit: He testified to the four-mile drawing area.

The Court: Overruled.

The Witness: Two to two and a half miles.

Q. (By Mr. Westbrook): Now, Mr. Dunn, Mr. Corinblit—first of all, let me ask you, do you remember the precise figures shown in the shaded area as being the area of greatest concentration of Fox Inglewood patronage on that survey?

A. No, I don't. It was in the vicinity of 45 per cent, I believe.

Q. To refresh your recollection as to the precise percentage, I show you a portion of your testimony

(Testimony of Cecil L. Dunn.)

appearing at page 3268 of the printed transcript in the Baldwin case, and ask you if that does further refresh your recollection.

A. Yes. It says right there. 45.8 per cent.

Q. Now, you testified that the percentage of concentration of the Academy Theatre patronage, as shown by the colored squares on this survey, was 27.1 per cent.

A. That's right.

Q. Now, what is the significance of those two different percentages of concentration in the shaded areas on the two surveys?

A. The Academy is twice as dispersed as is the patronage of the Fox Inglewood, roughly speaking, with 45.8 per [2626] cent in the shaded area, which was centered closely around the theatre. There is relatively twice as much as when we have 27.1 per cent concentrated that way, which supports my contention that the four mile circle which I drew then was primarily in consideration of the unusual southern extension, and if that had been eliminated, certainly a two to two and a half mile circle would have contained a very large proportion of the total patronage of the Fox Inglewood Theatre.

Mr. Westbrook: No further questions, your Honor.

The Court: Any other questions, Mr. Corinblit?

Mr. Corinblit: Just a couple.

The Court: I would like to get rid of this witness this afternoon.

Mr. Corinblit: Yes, sir.

(Testimony of Cecil L. Dunn.)

The Court: I hope you won't bring up any new subjects.

Mr. Corinblit: I won't. There are just one or two things.

Recross Examination

Q. (By Mr. Corinblit): Mr. Dunn, I think you said that when the Fox people decided to play the Chinese and the Loyola day and date, they decided, in effect, to divide up the patronage, the first run patronage, between those two theatres and whatever [2627] theatres were playing day and date, is that what you said?

A. I meant to imply they should have taken into account the probability of some division of patronage.

Q. Let's put it this way. If the Chinese Theatre was doing a half million in gross and the Loyola Theatre was doing 350,000 in gross, you say what they did was decide to divide up that 850,000 gross between the two theatres?

Mr. Mitchell: We have the figures here, your Honor, and I object to the iffy question on the ground it is argumentative and a hypothetical question.

The Court: It is argumentative.

Mr. Corinblit: The Chinese gross in 1950 was 432,000 and the Loyola gross in 1950 was 272,000. 432 and 270——

The Witness: 690.

Mr. Corinblit: 700,000.

The Court: Do I understand you to mean that

(Testimony of Cecil L. Dunn.)

if the picture only played in the Chinese Theatre, the Chinese Theatre would have taken in the entire \$700,000?

The Witness: Oh, no, not at all, but if it——

The Court: Well, assuming the potential was \$700,000, instead of getting the potential in one theatre, you got it in two theatres, is that what you are trying to tell us?

The Witness: No. I am simply saying when they [2628] decided to do that, they had to make up their minds how they wanted to get the revenue.

Q. (By Mr. Corinblit): They couldn't have got the 700,000 in the Chinese playing alone——

The Court: Now, that is speculation.

Mr. Corinblit: But this witness testified that the——

The Court: Now, this is too late in the afternoon to start an argument.

Mr. Corinblit: Let me just get these two points.

The Witness: The answer is yes, they could have.

Q. (By Mr. Corinblit): I beg your pardon?

A. Yes, they could have.

Q. The Chinese could have drawn \$700,000?

A. In all probability, if they had played exclusive runs instead of licensing them all around town the way they did. [2629]

Q. Now, just one question.

You testified this morning that the Loyola Theatre draw is four miles. A. That is right.

Q. Four miles. Now, 270,000 is almost—let me see, was almost 3/7 of the total gross here.

(Testimony of Cecil L. Dunn.)

A. May I show you something on the map.

Q. If you will let me finish.

Mr. Mitchell: If he would just ask a question instead of arguing with the witness we might get through some time.

The Witness: Go ahead.

Q. (By Mr. Corinblit): Just the one question.

Now, you testified the Loyola area as being four miles.

Now, I ask you—you took a survey in the Mar-coy case.

A. Right.

Q. And you know how many people from the Westchester, the four-mile area, went downtown and you know it is nowhere near 40 per cent of the total grossing, to the Chinese Theatre from that area, so in the light of that wouldn't you testify that it would be impossible for the Chinese Theatre to draw that 300,000 people from the Loyola area and what Twentieth Century-Fox did in fact was to draw revenue into the first-run theatre.

The Court: Mr. Corinblit, you are arguing the case. The witness testified as to his opinion, and [2630] that was that the Chinese could have gotten it all. You can argue your side of the problem to the jury, but not to the witness.

Mr. Corinblit: All right. No further questions.

The Court: You are not going to convince the witness and I don't know whether you are going to convince the jury.

(Testimony of Cecil L. Dunn.)

The Witness: Mr. Corinblit raises the question——

Mr. Mitchell: Just a moment.

The Court: Just a minute. If you want to argue with Mr. Corinblit——

The Witness: No, no. I just want to show him something which I think will be useful to him.

The Court: The witness is excused. I am trying to save you another per diem.

Mr. Corinblit, may this witness be excused?

Mr. Corinblit: Yes.

The Court: You may be excused.

(Witness excused.) [2631]

* * * * *

FRED GREENBERG

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: You may be seated. Will you state your name, please, sir?

The Witness: Fred Greenberg.

Direct Examination

Q. (By Mr. Mitchell): Mr. Greenberg, you are employed by Warner Bros. Pictures Distributing Corporation? [2636] A. Yes, sir.

Q. What is your present job there, Mr. Greenberg?

A. I am presently employed as the district manager.

Q. What does that mean?

(Testimony of Fred Greenberg.)

A. It means that I have supervision over the West Coast offices, six offices.

Q. For how long have you held that position?

A. Just two weeks.

Q. Prior to that time, what was your job there?

A. Branch manager of the Los Angeles exchange.

Q. And how long had you been branch manager?

A. Oh, about 14 years.

Q. So that you were the branch manager of the Los Angeles exchange area in 1950 and 1951?

A. I was.

Q. Who was the district manager at that time?

A. Henry Herbel.

Q. And Henry Herbel is now deceased?

A. He is.

Q. When did he die, Mr. Greenberg?

A. Oh, about a year or so ago.

Q. Now, in 1950 and 1951, did Warner Bros. own theatres in Hollywood, downtown Los Angeles and on Wilshire Boulevard?

A. Yes, sir. [2637]

Q. What were the names of those theatres?

A. The Warner's Downtown, the Wiltern on Wilshire, and the Warner's Hollywood on Hollywood Boulevard.

Q. The Warner's Downtown is located, is and was located at Seventh and Hill Streets?

A. That's right.

Q. And the Wiltern is located where?

A. Corner of Western and Wilshire.

(Testimony of Fred Greenberg.)

Q. And the Warner's Hollywood is located where?

A. You have me. It is on Hollywood Boulevard, but I don't know what the intersecting street is.

Q. What is the size of those theatres, approximately?

A. Oh, approximately 2,000 seats or better each.

Q. In 1950 and 1951, when your company owned those theatres, how did you license your first run Los Angeles pictures?

A. To those three theatres.

Q. And why did you do that?

A. We owned them.

Q. What difference does that make to you?

A. Well, of course, the profit motive might have been very much a contributing factor, but we used them for more purposes than that. We used them for what we call show case theatres, to establish the picture for not only this immediate territory, but the United States market, and for that [2638] matter the world market.

Q. In determining how long your pictures would play and when they would play, was there any advantage to you to have your own theatres exhibit the pictures? A. Obviously.

Q. In what way?

A. Well, we had control of the length of time, we controlled the houses because of our inter-relationship with our subsidiary, and we could, of course, demand and get—well, without really de-

(Testimony of Fred Greenberg.)

manding, but I mean we actually got what we wanted insofar as length of time.

Q. Why didn't you license first run to other theatres day and date in the suburban areas or in urban Los Angeles or elsewhere in this metropolitan area?

A. Well, it seems quite obvious that it was to our advantage, inasmuch as we were getting the profit from not only distribution, but also exhibition, having our own pictures in our own theatres and being able to present them to the public in our own way.

Q. What effect do you think or did you think that licensing a number of day and dates with the three Warner theatres would have on the Warner theatres receipts?

A. Unquestionably the receipts of the Warner theatres would be diminished.

Q. From what area did those Warner theatres draw at that time? [2639]

A. Well, from the greater Los Angeles area. It could extend into the surrounding towns, wherever people came into the showcases. They naturally would like to go to theatres such as we had on Hollywood Boulevard, which is a famous theatre all over the United States, well known, established as a show case house. We had our premieres there, stars were attracted there, and people from out of town would naturally want to see those theatres about which they had been reading and hearing.

Q. The record shows, Mr. Greenberg, that dur-

(Testimony of Fred Greenberg.)

ing 1950 and 1951, Warner Bros. did not license any of its pictures whatsoever to the Loyola, and that the only pictures ever licensed to the Loyola were two in 1949, *One Last Fling* and *House Across the Street*. What was the caliber of those pictures?

A. Well, of course, they were—if you want the parlance of the trade, they were dogs. They were just inferior pictures.

Q. The record also shows, Plaintiff's Exhibit No. 53, that these two pictures played at the Loyola on the lower half of the double bill.

I will show you for the purpose of refreshing your recollection two booker's work sheets and ask you, by referring to these, if you can tell me what film rental was paid [2640] for the use of those pictures at the Loyola.

A. *One Last Fling*, \$250, and \$250 for *House Across the Street*.

Q. That is a flat rental? A. That's right.

Q. Does that sort of a flat rental of \$250 mean anything with respect to the quality of the picture?

A. It certainly does because generally on a top picture—not generally, but we always get percentage terms.

Q. Why did you license those two pictures to the Loyola?

A. To recover as much money as we could, salvage.

Q. Why didn't you play them in the three show cases?

A. It would have been asking the public just a

(Testimony of Fred Greenberg.)

bit too much to pay the prices we demand in those first run houses for pictures of that caliber.

Q. In confining your licensing of first run Los Angeles pictures during this period to the three 2,000-seat Warner theatres, was that done as a result of any arrangement or understanding or conspiracy, combination or agreement with Loew's or Fox or Fox West Coast, or Universal, or Paramount? A. Nor anybody else.

Q. Now, your company licensed pictures on a 7 day availability at that time, Mr. Greenberg?

A. Yes, sir, in some communities. [2641]

Q. Where did you license at that time 7 day availabilities?

A. Pasadena, Glendale, Inglewood, Huntington Park—I believe that's it.

Q. How many did you license in Pasadena?

A. One.

Q. And in—— A. One each at that time.

Q. We will come to Inglewood in a few moments. A. I see.

Q. One in Pasadena. How many in Glendale?

A. One.

Q. How many in Huntington Park?

A. One.

Q. Now, turning to the period 1950 and 1951, in Inglewood how many 7 day availabilities did you license?

A. Two, I believe, at that time. I would have to have my memory refreshed, because we have

(Testimony of Fred Greenberg.)

made a few changes in 1950 and 1951. I am inclined to think we had two during that period.

Q. I think we can develop that with you.

The Clerk: Warner's Exhibit I-1 for identification.

(The exhibit referred to was marked as Warner's Exhibit I-1 for identification.)

Q. (By Mr. Mitchell): I would like to show [2642] you two documents, one marked Warner Bros. I-1 and one marked Warner Bros. G-3, and ask you if you received Exhibit I-1 on or about April 26, 1950, and you sent the reply on or about April 27, 1950. A. Yes.

Mr. Mitchell: I will offer these in evidence, your Honor.

The Court: In evidence.

The Clerk: Warner's Exhibits G-3 and I-1.

(The exhibits referred to were received in evidence and marked as Warner's Exhibits G-3 and I-1.) [2643]

* * * * *

Q. (By Mr. Mitchell): Now, in order to establish another date in this period, Mr. Greenberg, I will show you a document marked Defendants' Exhibit G-5 and another marked Defendants' Exhibit G-6. G-5 is dated 5 September 1950, and the G-6 is dated May 17, 1951. I will ask you if you received the September 5 letter on or about that date from Mr. Kupper. A. I did.

Q. And ask you if you made this——

(Testimony of Fred Greenberg.)

A. This one is addressed to Mr. Herbel but, of course, was referred to me.

Q. There is a memorandum dated May 17, 1951, which is marked Defendants' Exhibit G-6. That is your memorandum? A. Yes, sir.

Mr. Mitchell: I will offer these in evidence, your Honor. [2644]

The Court: In evidence.

The Clerk: They have already been marked in evidence, as far as my record shows.

Mr. Mitchell: You are right.

The Court: Are they already in evidence?

Mr. Mitchell: Yes. I didn't look at the back of them. [2645]

* * * * *

Q. Those are your initials? A. Yes.

Q. Now, prior to Mr. Kupper's request for bidding in the Inglewood area, how were you carrying on your attempts to get offers for the 7 day availability in that area?

A. We were offering our pictures to everyone in the area who would be interested.

Q. How did you go about that, Mr. Greenberg?

A. Call these accounts either in person or by phone, generally by phone, to offer to negotiate to market our product.

Q. Now, this is a period prior to September 1950, and except for a one-week period there, the Paradise, I call your attention to the fact that the Paradise was not in existence as an operating theatre, so can you tell me with whom Warner [2646]

(Testimony of Fred Greenberg.)

Bros. was negotiating with respect to the 7 day availability?

A. The Academy or the La Tijera, Imperial, I don't remember all the theatres that we negotiated with, but those stand out. Probably some pictures went to the United Artists.

Q. Southside?

A. Yes, we sold pictures to the Southside.

Q. Rio? A. Yes, Rio.

Q. Whether you sold them or not, did you solicit offers?

A. We solicited offers, certainly.

Q. Imperial?

A. Imperial. That was a part of Kupper's.

Q. Now, during this period prior to Mr. Kupper's request for bidding, as covering that period, I will show you a schedule of pictures and ask you whether or not you have checked this to ascertain whether this is the correct schedule of the theatres that played your pictures between May 1, 1950, and September 4, 1950, on the 7 day availability in the Inglewood-Westchester area. A. Yes, sir.

Mr. Mitchell: I will offer this in evidence, your Honor.

The Court: In evidence.

The Clerk: Warner's Exhibit I-2. [2647]

(The exhibit referred to was received in evidence and marked as Warner's Exhibit I-2.)

* * * * *

Q. (By Mr. Mitchell): Now, when you say, Mr. Greenberg, that you during that period negotiated

(Testimony of Fred Greenberg.)

by having your bookers or salesmen — not your bookers, but your salesmen contact these accounts, just tell me what you would do after you had contacted the accounts, how would you determine to which theatre or theatres to license the picture?

A. We determined that very much by the interests of the individual account and, of course, what we felt the returns to the company would be in each case.

Q. Well, in negotiating did the fact that one exhibitor made an offer which would return you a greater amount of film rental than the other have anything to do with which theatre you awarded it to? A. Certainly.

Q. What did that have to do with it?

A. It would have this to do with it. That was the deal that we would prefer to take and usually did.

Q. Now, with respect to these three pictures, these three Warner pictures that were licensed to the Paradise at the time of the Paradise opening, did you personally have anything to do with licensing those pictures to the Paradise? [2649]

A. No, I did not.

Q. Who did, so far as you know?

A. Mr. Herbel did.

Q. Did Mr. Herbel have some sort of a relationship with Mr. Marco Wolff?

Mr. Corinblit: Object to that, your Honor, as calling for a conclusion. What kind of relationship?

(Testimony of Fred Greenberg.)

Mr. Mitchell: I don't mean exactly that.

Q. Was there a personal situation between Marco and Mr. Herbel?

Mr. Corinblit: Now, your Honor, I will make the same objection to that.

The Court: I think it is purely a conclusion of the witness.

Mr. Mitchell: All right. I will ask it another way.

Q. Where did Marco have a ranch and where did Mr. Herbel have a ranch?

Mr. Corinblit: I object to that. What difference does it make?

The Court: Do you know of your own knowledge whether Mr. Herbel and Mr. Marco were friends?

The Witness: Yes, I do, of my own knowledge. They were very good friends. Not only because of their association in the motion picture business for [2650] many, many years—Mr. Herbel had quite a background in this business that extended over a good many years, through which time, of course, he came in contact with Mr. Wolff, but they both had rather nice ranches on Devonshire. They were neighbors. They lived near Chatsworth. Their families were out there.

I know that they had social contacts other than business contacts. They were very good friends. They had a great deal of respect for each other.

Q. (By Mr. Mitchell): All right. Now, with respect to the method of licensing after Mr. Kupper

(Testimony of Fred Greenberg.)

requested that he have an opportunity to bid for your product, then how did you go about licensing your pictures in the Inglewood area on 7 day availability?

A. We sent formal bid forms to each account in the general area. [2651]

Mr. Corinblit: May we have a definition of "general area"?

The Witness: In the Inglewood competitive area.

Q. (By Mr. Mitchell): I am going to introduce into evidence the bid forms themselves, the request for offers which will show the theatres to whom requests were sent.

The Court: May I ask this witness a question?

Mr. Mitchell: Yes.

The Court: There is bidding and negotiation for pictures?

The Witness: Yes.

The Court: Which does a distributor prefer to do, license pictures on a bid or negotiate for them?

The Witness: Well, as a distributor and to simplify matters, I would rather bid.

The Court: You got a request to bid and you established bidding?

The Witness: That is right.

The Court: You think bidding is preferable to negotiation?

The Witness: Well, from a point of view of one who wants to make his job a little bit easier, yes.

Q. (By Mr. Mitchell): Well, I think you had better explain what you mean.

(Testimony of Fred Greenberg.)

A. Well, when an account bids and they establish exactly what they want to pay for the film, [2652] we merely are then required to evaluate on the basis of what they submit as their offer which one to be the best. We open them up and then we give the picture to whatever account it was made—that is, that made the best offer.

The Court: Purely a dollar and cents proposition?

The Witness: That is what it is. That is what this business is.

Q. (By Mr. Mitchell): And how does it differ on negotiation?

A. It differs only in this way, that in negotiations when we establish certain terms for our pictures, and if that picture doesn't do as well as expected very often we are required and do make adjustments, but when a bid is submitted, when it is in competition with others who have made honest bids, we consider the deal is closed. There is no adjustment or no consideration given, of course, because that would be to the detriment of the others—to the disadvantage of the losing bidder.

Q. You mean if you made an adjustment with the high bidder, he might come out paying less than some other fellow who had offered to pay, is that what you mean? A. No.

Q. Well, supposing you make—supposing you were to make an adjustment with the highest bidder, couldn't it happen that you, if you should follow such a practice, that you would come [2653]

(Testimony of Fred Greenberg.)

out by letting him have the picture for less than some other fellow had offered?

Mr. Corinblit: I will object to that.

The Witness: Except——

Mr. Corinblit: I will object to that as being leading and suggestive.

The Court: Overruled.

The Witness: Except that flatly we would not give a bid any adjustment or further consideration whatever. He writes down on that bid that we have accepted what his deal is and we expect him to pay off just that way.

Q. (By Mr. Mitchell): Under your method of operation was an exhibitor permitted to withdraw his bid before it was accepted?

A. Certainly, at any time before it was accepted.

The Court: After it was accepted, he couldn't withdraw?

The Witness: That is right. If he had the winning bid he couldn't withdraw.

Q. (By Mr. Mitchell): I think the best way to handle this would be to mark for identification—I will show you a group of—(handing documents to Mr. Corinblit).

I will show you a large group of competitive bid applications which have already been marked for identification and ask you if you recognize those as being your company's form of bid applications?

A. They are. [2654]

Mr. Mitchell: All right. I would like to offer

(Testimony of Fred Greenberg.)

these in evidence, your Honor, and they are all marked for identification.

In order to save time now, may I not go ahead rather than have to stop and have all of these marked?

Mr. Corinblit: There is one I would like to get straight. I understand that they are not all present. I understand some of them are lost. Do you have a list of those that are lost?

Mr. Mitchell: I can give you those as we go along. There are just a few.

Mr. Corinblit: Subject to that we have no objection.

The Court: They may be received in evidence.

The Clerk: Warner's Exhibits H-2 to H-22, inclusive.

(The exhibits referred to were marked Warner's Exhibits H-2 to H-22, and received in evidence.)

Mr. Mitchell: Now, there are already in evidence, your Honor, some stray bid applications here. They are Plaintiff's Exhibit 10-J, 10-N and 10-P and also Warner's H-1.

I think with those we have all the bid applications in. Will you pardon me just a moment, your Honor, until I get these in shape. I didn't want to put these few that have been introduced in with the others until we have the problem straightened out and I would like to do that now so I can show them to the witness. [2655]

Q. Now, using these competitive bid applications

(Testimony of Fred Greenberg.)

which I will place before you—and I think I have them in order so that we will not get too confused, I would like to have you tell the jury to what theatres you sent applications—application forms on the picture *Breaking Point* in September 1950.

A. To the Paradise, United Artists, Fox, the Imperial, La Tijera. That is it.

Q. Now, when you say Fox, you mean you sent one application form to Fox which would include the Fox theatres, the Fifth Avenue and Academy?

A. That is right. And then they scratch out in the event that they do make an offer, they scratch out the theatres that they don't want the bid for, and leave the other one there, the one that they are actively bidding for unmarked.

Mr. Mitchell: Now, Mr. Corinblit, we have other information that indicates an application was sent to the Southside, but that application seems to be missing.

Mr. Corinblit: I understand you have that information but I would be glad to see it.

Q. (By Mr. Mitchell): Do you remember whether or not an application was also sent to the Southside in each of these instances?

A. It undoubtedly was because in the clearance [2656] as indicated on this bidding form, on each one of them, this clearance reads: "7 days following Los Angeles first run closing, clear of Fox, United Artists, Inglewood, La Tijera, Southside, Los Angeles, and Paradise."

Mr. Corinblit: Your Honor, I wonder if we

(Testimony of Fred Greenberg.)

could have this witness tell us whether or not he knows positively that that is so—that he has a recollection that those things went out to the Southside. That is all I want to know.

Mr. Mitchell: You heard his testimony as well as I.

Mr. Corinblit: I move to strike it.

Mr. Mitchell: There won't be any more Southside applications missing so we will continue and you can argue with him about his recollection on this one picture, if it is important.

Q. Does your record show—do your records there show which theatres submitted offers on *Breaking Point*?

A. Well, the *Paradise* made an offer. *United Artists* made an offer. *Fox* made an offer.

Q. For what theatre?

A. I can't tell. This "rejected" stamp over the *Fifth Avenue*—it doesn't indicate here. I can't tell from this.

Q. All right.

A. The *Imperial* made an offer. The *La Tijera* made an offer.

Q. All right. Now, let us turn to the next [2657] picture, *Three Secrets* also in September 1950. To which theatres did you send applications for bids?

A. The *Academy*, the *Paradise*, *United Artists*, *La Tijera*, the *Imperial* and *Southside*.

Q. And which theatres sent in bids?

A. The *Academy* submitted a bid. The *Paradise*

(Testimony of Fred Greenberg.)

submitted a bid. United Artists submitted a bid, and so did the La Tijera.

Q. The Imperial and the Southside submitted no bid? A. That is right.

Q. Now let us turn to the next picture in October 1950, Rocky Mountain and tell me which theatres were sent applications for bids?

A. The Paradise, the Academy, the United Artists, the Southside, the Imperial, the La Tijera.

Q. And which theatres submitted bids?

A. The Paradise submitted a bid. The Academy, the United Artists did not submit a bid. And neither did the Southside. The Imperial submitted a bid.

Q. How about the La Tijera?

A. The La Tijera submitted a bid.

Q. All right. Now, the next picture is Glass Menagerie. Which theatres were applications for bids sent?

A. The Paradise, the Academy, the United Artists, La Tijera, Imperial and the Southside. [2658]

Q. And which theatres submitted bids?

A. The Paradise, the Academy, the United Artists did not submit a bid. La Tijera submitted a bid. The Imperial submitted a bid and the Southside did not submit a bid.

Q. All right. On the picture Break Through—perhaps we would save time if we were to do both operations at once, telling which theatres were sent offers and which submitted bids.

A. The Paradise submitted a bid. The Academy

(Testimony of Fred Greenberg.)

submitted a bid. The United Artists submitted a bid. The La Tijera submitted a bid as did the Imperial. The Southside did not submit a bid.

Q. And when you say they did not, you mean you sent them applications but they didn't choose to submit a bid? A. That is right.

Q. All right. Let us take the next picture West Point Story and do the same thing.

A. To clarify that, they probably returned the bid and indicated across the face of it they were not interested and did not bid.

Mr. Corinblit: Your Honor, I move to strike that answer.

The Court: That may go out.

Mr. Corinblit: As a voluntary statement.

The Court: Apparently it is.

Q. (By Mr. Mitchell): Do you have the [2659] Southside bid application there?

A. It says "No bid" across the face of it which indicates, of course, that the account wrote down "No bid."

Mr. Corinblit: Your Honor, I move to strike that answer as being a supposition. If Mr. Greenberg's own records show there was no bid, that is all right, but that is a stamp put on by Warners and I take it he doesn't have any statement in the file from the Southside Theatre, is that correct?

The Witness: No, that is not correct.

Mr. Corinblit: All right. Let us have the testimony.

The Witness: When we submit bids to these

(Testimony of Fred Greenberg.)

various accounts, they indicate that they are not interested in the picture by writing across the face of it, "No bid" or "Not interested at this time," or whatever they care to say.

The Court: They write across the application "No bid" and send it back to you?

The Witness: They send the bid back in most instances. In this case they did send it back "No bid."

Mr. Corinblit: All right.

Q. (By Mr. Mitchell): All right. Let us take the next picture, West Point Story and do the same thing. That was in November 1950.

A. The Academy submitted a bid. So did the United Artists. So did the Imperial. So did the La Tijera. The Southside did not nor did the Paradise. [2660]

Q. The Paradise was sent an application for a bid? A. Yes.

The Court: Was the application sent to the Paradise returned to you?

The Witness: There is no marking at all on this return. Evidently he did not—I don't know.

Q. (By Mr. Mitchell): Does your Paradise bid application contain any signature or marking on it at all? A. No.

Q. And your Southside application has in pencil— A. Across the face of it.

Q. A striking line across it with a handwritten "No bid"? A. That is right.

(Testimony of Fred Greenberg.)

Mr. Corinblit: Could you identify the handwriting, Mr. Mitchell?

The Witness: Could I?

Q. (By Mr. Mitchell): Are you able to identify that handwriting? A. No, I am not.

Mr. Corinblit: His testimony is this is Warner's?

Mr. Mitchell: He said, "No, I am not."

Q. The next picture which is in December 1950 is Highway 301. What theatres were applications for bids sent to and which theatres put in bids and what did the others do? [2661]

A. The Imperial bid. The La Tijera bid. The Southside did not. The United Artists did not. The Academy did. The Paradise did not.

Q. And the Paradise was sent an offer?

A. No offer.

Q. I say it was sent an application?

A. Yes, sir.

Q. All right. The next picture is Dallas in December 1950. What theatres were applications sent to and which ones bid?

A. The Academy submitted a bid. The United Artists submitted a bid. The Southside did not submit a bid. The Imperial submitted a bid and so did the La Tijera. The Paradise did not.

Q. All right. The next picture is Operation Pacific and the same question.

A. The Academy submitted a bid. The United Artists submitted a bid and so did the La Tijera. The Imperial submitted a bid. The Southside did not and neither did the Paradise.

(Testimony of Fred Greenberg.)

Q. The next one is Storm Warning in 1951.

A. Storm Warning. The Academy indicated "No offer at this time." The United Artists submitted a bid. The Imperial made no offer. And neither did the La Tijera. Neither did the Southside and neither did the Paradise. [2662]

Q. The Paradise was sent an application?

A. It was.

Q. That was Storm Warning? A. Yes, sir.

Q. The next one, Enforcer in February 1951 and the same question.

A. The Academy submitted a bid. The Southside did not. The La Tijera did not. The Imperial did not. The United Artists did not. And neither did the Paradise.

Q. All right. The next one is Raton Pass. As I understand it, the natives call it Ratoon.

A. The Fox submitted a bid. United Artists did not. The Southside did not. The La Tijera did not nor did the Imperial nor did the Paradise. They were sent a bid. [2663]

Q. All right. The next picture, I guess, are joint pictures, Dodge City and Virginia City. Is that a joint bill or something?

A. They are what we call a re-issue combination. They are old pictures that were brought back in combination because of their star value to make a bill.

Q. All right. The same question as to those pictures.

A. The Academy made no bid. The United Art-

(Testimony of Fred Greenberg.)

ists made no offer. The La Tijera did not, nor did the Imperial, nor did the Southside, nor did the Paradise.

Q. You received no bids on that combination?

A. No, sir.

Q. All right. Now, the next picture in March 1951 is Lullabye of Broadway.

A. The Academy submitted a bid. The United Artists did not. Nor did the La Tijera, nor did the Imperial, nor the Southside, nor the Paradise.

Q. Although the Paradise received an application?
A. Yes, sir.

Q. The next picture is Sugar Foot in March 1951.

A. Imperial did not submit a bid. The Southside did not submit a bid, nor did the La Tijera. United Artists submitted a bid. The Paradise did not.

Q. In each instance all these theatres that you are naming were sent applications for offers?

A. That's right. Every one of these theatres in every case received the same sort of bid form.

Q. Did you mention the Academy there receiving an offer on Sugar Foot?

A. They received one, but they did not return it.

Q. All right. The next picture, which is in April 1951, is Only the Valiant. Same question.

A. The Academy submitted a bid. United Artists did not. Imperial did not. La Tijera did not, nor did the Paradise.

Mr. Corinblit: How about the Southside?

(Testimony of Fred Greenberg.)

The Witness: If they did, they didn't return it. I have no record of it here.

Q. (By Mr. Mitchell): You have no record of the Southside?

A. They were mailed one, just as the other theatres. Well, there is no indication that the Southside was sent a bid on this particular picture.

Q. The next picture is Communist for the FBI in April 1951. Same question.

A. The Academy made no offer. The United Artists made no offer and the Paradise made no offer. That's all I have that has been returned.

Q. All right. The next picture in April 1951 is Goodbye My Fancy. Same question.

A. The Academy made no offer. United Artists [2665] made an offer. La Tijera made no offer. Imperial made no offer. The Paradise made no offer.

Mr. Corinblit: Southside?

The Witness: They are not indicated. They are not on this bid form.

Q. (By Mr. Mitchell): Next picture is Along the Great Divide in May 1951.

A. The Academy made no offer, neither did the United Artists nor the La Tijera, nor the Imperial, nor the Paradise. That is the only returned offers I have.

Q. All those that you have there were sent bid applications? A. Yes, sir.

Mr. Corinblit: Just a minute. May I take a look at the last bid form, please?

Mr. Mitchell: Yes, sir.

(Testimony of Fred Greenberg.)

Mr. Corinblit: Thank you.

Q. (By Mr. Mitchell): During this bidding period between about September 1, 1950, and May 9, 1951, when one of the theatres made the highest bid, then what would you do?

A. We would award the picture to the highest bidder and notify the other bidders, or contestants, whatever you call them, that their offers were rejected.

Q. Well, what about the matter of exclusivity of that highest bidder, or the loosely termed clearance, priority of [2666] availability, how did you handle that?

A. It was handled in this manner. The man indicated on his bid form the clearance that he required to be considered as a part of his bid. He would indicate on this form that he wanted clearance over whatever theatres he felt was in competition with him.

Q. Did you sometimes license a second and sometimes a third and even fourth 7 day run in this area?

A. During that period?

Q. During that period.

A. I would have to refresh my mind on that, Mr. Mitchell. When you get me into periods, I would have to look at the records.

The Court: Mr. Mitchell, it is nearly 11:00 o'clock.

Mr. Mitchell: All right.

The Court: While you are looking for that data, we will take the morning recess.

(Testimony of Fred Greenberg.)

Mr. Mitchell: All right, sir.

The Court: Ladies and gentlemen of the jury, we are about to take another recess. Again it is my duty to admonish you that you are not to discuss this case with anyone, you are not to allow anyone to discuss it with you, and you are not to formulate or express any opinion as to the rights of the parties until the case is finally submitted to you. [2667]

With that admonition, we will now recess until 15 minutes after 11:00.

(Recess.)

The Court: Is it stipulated the jury is present in the box?

Mr. Corinblit: So stipulated, your Honor.

Mr. Mitchell: Yes, sir.

The Court: You may proceed.

Q. (By Mr. Mitchell): Mr. Greenberg, through the use of the cut-off cards which are in evidence, I would like to develop the method of play and film rental for three pictures. Let's start with *The Enforcer*.

Mr. Mitchell: Will you furnish the cut-off card for *The Enforcer* on the United Artists Theatre to the witness, Mr. Westbrook?

(Mr. Westbrook handing document to witness.)

The Witness: *The Enforcer*?

Q. (By Mr. Mitchell): Yes. I want the film rental paid by the United Artists on *The Enforcer* for the 7 day run. A. \$793.43.

(Testimony of Fred Greenberg.)

Q. Now, you also played *The Enforcer* on a 7 day run in the La Tijera. Will you give me the film rental on that? A. \$789.17.

Q. Also at the Imperial?

A. \$782.54. [2668]

Q. And also the Southside? A. \$719.18.

Q. Now, can you tell me from the cut-off card there whether you had a 14 day run?

A. You say 14? You are not interested in the later runs?

Q. Yes, I am interested in the later ones. I want to see what *The Enforcer* made in the Inglewood-Westchester area, so if you have got a later one, give me that.

A. All right. At the Century Drive-In on the 21 days, we got \$250, and at the Paradise \$200.

Q. On the 21 day availability?

A. Yes, sir.

Q. That was your play-off in the Inglewood-Westchester area of *The Enforcer*?

A. On *The Enforcer*.

Mr. Mitchell: The records which we have here available to both counsel show that the national gross on that picture was \$1,449,000 and the Los Angeles exchange territory gross was \$85,000.

Is it necessary for me to read from the records into the record here?

Mr. Corinblit: Do you have them in front of you?

Mr. Mitchell: I don't have them in front of me.

Mr. Corinblit: You go ahead and I will check.

(Testimony of Fred Greenberg.)

Mr. Mitchell: Subject to check, will you agree the records so show?

Mr. Corinblit: Yes, sir.

Q. (By Mr. Mitchell): I would like to take the picture—excuse me just a minute, withdraw that. On the picture *Enforcer*, you then played four day and date 7 day runs in the Inglewood area.

A. That's right.

Q. When you testified you said that the Academy was the only theatre to make a bid on that picture, just tell us how you went about arranging with these four theatres to play, and what you did about the Academy.

A. I would like to look at those bids on that picture.

Q. That is in February 1951, about.

A. Was that on the 7 day availability that you had that saturation booking?

Q. Yes. You have just consulted your cut-off cards on that.

A. That bid was rejected. The bid to the Academy was rejected and we negotiated with those four theatres.

Q. When you go about negotiating after you have rejected a bid, how do you go about it?

A. We call on every one of the accounts in the area and offer them the picture, trying to secure the best terms on a saturated booking. [2670]

Q. In this instance on a saturated booking?

A. Yes, sir.

Q. Let's take the picture *Goodbye My Fancy*,

(Testimony of Fred Greenberg.)

which I think you will find played in the La Tijera, Southside and United Artists.

A. We earned on Goodbye My Fancy at the La Tijera \$780.70.

Q. 787?

A. No, \$780.70. At the United Artists we earned \$623.78. At the Southside we earned \$400.

Mr. Mitchell: Now, will you stipulate, Mr. Corinblit, subject to correction, that the national gross on that picture was \$1,046,000 and the Los Angeles exchange area gross was 57,000.

Mr. Corinblit: What was the figure?

Mr. Mitchell: Pardon me?

Mr. Corinblit: 57 and 1 million?

Mr. Westbrook: 1,046,000 on the national rental, and 57,000 on the Los Angeles exchange territory rental.

Mr. Corinblit: Right. [2671]

At the Imperial we earned \$490.62 — oh, I am sorry. That is the gross.

Q. (By Mr. Mitchell): You have some more play-off there — these three on 7 day availability here — United Artists and Southside.

A. That is right.

Q. All right. Now, what additional play-offs do you have?

A. At the Imperial we earned \$136.72.

Q. \$176.32? A. That is correct.

Q. Which is it 136 or 176?

A. Let me look back. I will read it to you again. It is \$136.72.

(Testimony of Fred Greenberg.)

Mr. Mitchell: I transposed the figures.

Q. All right. Now, was there any other play-off on that picture in the Inglewood-Westchester area?

A. That was all.

Q. All right. Now, in that instance where you licensed three day and date 7 day availabilities, will you check your bid records there and see whether a bid was rejected. I believe you said it was the United Artists bid.

A. What picture was that, Mr. Mitchell?

Q. Goodbye My Fancy. That was in about April 1951, toward the last of your papers there. [2672]

A. The United Artists bid was rejected.

Q. And then in that instance how did you go about getting a theatre or theatres in which to play your picture?

A. Solicited them all. Tried to sell them the picture.

Q. Including the Paradise?

A. Including every theatre that we have a chance of selling the picture to, including the Paradise.

Q. All right. Now, I would like to have you take the picture Glass Menagerie.

A. At the Southside we earned \$908.12 or 42 cents. I can't tell from this.

Q. Will you give the amount again?

A. \$908.12.

Q. On a 7-day availability? A. Yes, sir.

Q. Did you play it in another theatre on the 7 day availability?

(Testimony of Fred Greenberg.)

A. At the United Artists we got \$1000. That was on a 14 day availability. I am sorry.

Q. I think you will find you played it on a 7 day availability also in the Academy?

A. Yes. We earned \$1184.70.

Q. All right. Now, I think you will find, if you check, that the Paradise played a 14 day availability on that picture.

A. You said 14 days? [2673]

Q. Yes.

A. And we earned \$200 from the Paradise.

Q. And I think if you will check the Centinela Drive-In you got a 21 day play there?

A. \$150.

Q. What is that amount again? A. \$150.

Q. And subject to *correct*, Mr. Corinblit, on that, I would like a stipulation that the national gross was \$946,000 and the Los Angeles gross was \$65,000.

Mr. Corinblit: So stipulated.

Mr. Mitchell: Are my figures correct?

Mr. Westbrook: They are correct, yes.

Q. (By Mr. Mitchell): All right. Now, Mr. Greenberg, calling attention to the fact that the Glass Menagerie with a national gross of \$946,000 as compared with the national gross on The Enforcer of \$1,449,000, playing two theatres on the 7 day availability day and date, and getting an additional play-off grossed \$3,442 and that on The Enforcer with a higher national gross playing four theatres on the 7 day availability and getting only

(Testimony of Fred Greenberg.)

two theatres on the 21 day, you got \$3,500 gross. What does that indicate to you about playing four theatres on a 7 day availability versus playing two theatres on a 7 day availability? [2674]

Mr. Corinblit: Object to that as being argumentative and calling for a conclusion of the witness. No connection has been shown between these two items he is asking about. [2675]

Mr. Mitchell: That is what I wanted the witness to do, to show the connection.

The Witness: Pardon me, Mr. Mitchell. Would you mind repeating that question?

(Question read by the reporter.)

The Witness: I would consider it to be much to the advantage of everyone concerned to be playing a limited number of theatres. Saturated booking, maintaining additional overheads on that play-off I believe works to everybody's disadvantage, including our own. The theatres themselves don't gross enough to make a substantial profit and obviously we are not benefiting.

Q. (By Mr. Mitchell): What does what you call a saturation booking on 7 day, such as these four 7 day theatres, do to your ability to play 14 and 21 day availability in the area?

A. It diminishes very much our chance of getting additional play-off, not only on 14 and 21, but even in houses that play later.

Q. Now, we have here a picture *Goodbye My Fancy*, which you played on three 7 day availabilities in the area, that picture having a national

(Testimony of Fred Greenberg.)

gross somewhere near *The Enforcer*, a little less, and your figures show that the play-off in the Inglewood area on this basis netted you \$1,941 against *The Glass Menagerie* play-off here of a picture which grossed [2676] \$946,000, and I should say that is somewhere near the *Goodbye My Fancy* gross, and paid total film rental of 3,432, nearly a third more.

What does that indicate to you about the advisability of playing three day and dates versus playing two day and dates on a 7 day availability?

A. I would still hold to my thinking that two works to the advantage of everyone.

Q. After your memorandum of May 17, 1951, which has been admitted in evidence as Defendant Warner's Exhibit G-6, when you instructed the bookers and salesmen to discontinue bidding in the Inglewood area on the 7 day run, how did you license your seven day run thenceforward?

A. Through negotiation.

Q. I mean through September 1951.

A. There was negotiation.

Q. And in such negotiation from that time on what opportunity did you give the *Paradise*?

A. Equal opportunity?

Q. What did you do? What did your salesmen do under your direction?

A. The salesmen under my direction—as a matter of fact, in that particular case if Mr. *Paradise* sought the picture, he would have to compete for it with other theatres that had, it was indicated

(Testimony of Fred Greenberg.)

very clearly by one of the competing [2677] theatres that they felt they had—in this case it happened to be the La Tijera, and he insisted upon it, if he had to compete for pictures, he insisted on bidding against this one house.

Q. Did you have formal competitive bidding from that time on?

A. Formal bidding was offered the Paradise under such circumstances, pictures were offered them to negotiate under such circumstances, but only on an equal opportunity basis with the La Tijera, the one most involved.

Q. You also offered La Tijera an opportunity to negotiate? A. That's right.

Q. And what if the La Tijera offered the most, what kind of clearance would you give him?

A. What was demanded under the terms of whatever our negotiation called for. That was considered a part of the deal.

Mr. Mitchell: I would like to just check here a moment.

Q. In licensing your pictures in the Inglewood area on these various runs, 7, 14, 21, during the period of August 1950 to September 17, 1951, when the Paradise was open, did you have any arrangement, understanding, conspiracy, combination, or other form of agreement with Paramount or [2678] Loew's or Universal in respect of these varying methods that you adopted in licensing pictures on those subsequent runs?

A. None whatever.

(Testimony of Fred Greenberg.)

Q. And in respect of the Fox company and Fox West Coast, other than your film licensing agreements, did you have any such arrangement, understanding or combination or conspiracy with the Fox companies? A. No, sir.

Mr. Mitchell: That's all. [2679]

Cross Examination

Q. (By Mr. Corinblit): Mr. Greenberg, just a few minutes ago Mr. Mitchell asked you what conclusions you drew from these figures on here about being to the best interest of your company not to sell three runs but only sell two runs, is that right, and you testified—do you testify here before this jury that your company has established that policy, that on your pictures it is to your best interest in the Inglewood area to sell two 7 day runs and not three?

The Court: You are talking about 1950 and 1951?

Mr. Corinblit: Let us talk first about 1950 and 1951.

The Witness: Let me have that question again.

Mr. Corinblit: Will you read the question?

The Court: Read the question, Mr. Reporter.

(Question read.)

The Witness: I feel it to the best interest of the company to diminish the runs.

Q. (By Mr. Corinblit): I am sorry.

A. I feel it is to the best interest of the company to diminish the runs—under the circumstances

(Testimony of Fred Greenberg.)

to diminish the runs and also to maintain a less number of overheads.

Q. Well, we will get to the overheads in a minute.

When you say "a less number of runs," you mean two instead of three? [2680]

A. (No answer.)

Q. That was the question Mr. Mitchell asked you.

A. That is a rather difficult question to answer directly.

Q. In other words, you are not willing to state that it was to the best interest of your company to have two runs instead of three in 1950 and 1951, are you?

A. I feel that it is best, yes, but then for me to reach back to 1950 and '51 with changing circumstances, I am not prepared to make a direct answer.

Q. Well, I want to make this perfectly clear. You didn't have that feeling in 1950 and '51 and you don't have the feeling now that it is to the best interest of your company to have two instead of three runs? A. (No answer.)

Q. Or is your answer you don't know?

A. I think it could be put in that category.

Q. That is, you just don't know?

A. Well, I don't want to say that I don't know.

In practical operation of distributing motion pictures in a general area I feel that it is better not to difuse the possibilities of a motion picture.

(Testimony of Fred Greenberg.)

Mr. Corinblit: I move to strike that answer, your Honor, as being non-responsive.

My question is specific and that is whether or [2681] not in 1950 and '51 it was Warner's position that it was to their best interest to have two runs instead of three.

The Court: Well, does this witness have the right to establish the position of Warner Bros. as a whole? He can give his own opinion.

Mr. Corinblit: I will take his own opinion.

The Court: This witness may have nothing to do with the establishing of policy.

Mr. Corinblit: Mr. Mitchell didn't put Mr. Greenberg on the stand in order to get his personal private opinion. I take it he put Mr. Greenberg on the stand to establish what was Warner's opinion or Warner's policy.

Mr. Mitchell: Unfortunately I don't have Mr. Herbel here, who was the real boss, so I put on the next best man.

The Court: I don't know whether a district office has a right to establish policy in a district, or does he?

The Witness: Mr. Herbel did establish this policy. Mr. Herbel did the negotiations as you are aware.

Mr. Corinblit: Yes.

The Court: Mr. Herbel established this policy, did he?

The Witness: I mean Mr. Herbel handled that particular area during that period.

(Testimony of Fred Greenberg.)

The Court: Was Mr. Herbel the one who established the policy in that district or did he consult somebody higher up?

The Witness: He established that policy in that district. [2682]

The Court: He established the policy in that district?

The Witness: Yes.

The Court: Did you have anything to do with establishing that policy?

The Witness: No, I did not.

Q. (By Mr. Corinblit): I want to turn to your opinion that Mr. Mitchell asked you about. Was it your opinion in 1950 and 1951 that it was better to have two runs instead of three in the Inglewood-Westchester area on a 7 day availability?

A. I just don't know.

Q. You don't know the answer to that question?

A. (No answer.)

Q. And therefore when Mr. Mitchell asked you what conclusion you drew from these figures as to whether it was better to have two runs instead of three, your answer is you don't know, isn't that right?

A. On that particular question, yes.

Q. Well, your answer really isn't you don't know, Mr. Greenberg. Your answer is really that you do know it is better to have three runs than two and the reason you know that is because your company has been doing that — has been having

(Testimony of Fred Greenberg.)

three runs on your best pictures in that area, isn't that right? A. Quite often. [2683]

Mr. Mitchell: That question is in another time and under different conditions. It is very hard to try a lawsuit as of 1950 in 1956 when things are so different.

We have been doing it, and I think that jumping from 1950 to 1956 with this witness in this manner is both confusing and misleading and that is the purpose of it, your Honor.

The Court: State the question as to 1950-51 and if you want to show there has been a change, you may do so and ask the witness the reason why.

Q. (By Mr. Corinblit): Mr. Greenberg, it is a fact on the picture Mister Roberts you had three runs on the 7 day availability in the Inglewood-Westchester area?

A. I would have to look that up.

Mr. Mitchell: That is a way beyond 1950 and '51. As I recall, Mister Roberts is a current picture.

Mr. Corinblit: Yes. That is correct, Mr. Mitchell. But the court ruled I could show the change of position.

Mr. Mitchell: Let us get the dates.

Mr. Corinblit: September 14, 1955 and I will give you the theatres.

Q. As a matter of fact, you played the picture Mister Roberts day and date at the Paradise, at the Academy and at the Southside beginning September 14, 1955. That is correct, isn't it? [2684]

A. I assume that it is correct.

(Testimony of Fred Greenberg.)

Q. And Mister Roberts was probably—was that one of your best pictures that year?

A. It was a big grosser.

Q. It was a big grosser and so your company took the position that this big grosser—that it was good Warner policy to have three runs in the Inglewood-Westchester area on a 7 day availability?

A. It is easier to do it with a big grosser, you know.

Q. In other words, on the better pictures it is good policy? A. Sometimes.

Q. All right. Now, let us turn—was the picture—I wasn't sure of this—I am not sure whether The Court Martial of Billy Mitchell was a Warner picture. A. Yes, it was.

Q. That was a big grosser?

A. Very large, but not as large as Mister Roberts.

Q. And on September 11, 1956, you played three runs day and date on the picture The Court Martial of Billy Mitchell at the Paradise, the Academy and the Southside, isn't that right?

Mr. Mitchell: September 1956?

Mr. Corinblit: September 11, 1956. [2685]

Mr. Mitchell: How can you mean that?

Mr. Westbrook: It hasn't occurred yet.

Mr. Corinblit: I beg your pardon. I am sorry. I meant January 11, 1956.

The Witness: I am in an utter state of confusion anyhow, but go right ahead.

(Testimony of Fred Greenberg.)

Q. (By Mr. Corinblit): I am sorry.

The Court: Maybe you had better rephrase your question. You have us all confused.

Q. (By Mr. Corinblit): The question is with respect to the big grosser The Court Martial of Billy Mitchell. It began playing January 11, 1956, and you played that picture simultaneously in three theatres on a 7 day availability and those theatres were the Paradise, Academy and the Southside, isn't that right?

A. That is right. May I point out something, Mr. Corinblit?

Q. Believe me, Mr. Greenberg, I am going into the justification for these matters in just a few moments.

How about the picture Young at Heart? Was that a big grosser?

A. Not in comparison with the other two pictures.

Q. That was on the small grossing side and on that picture, a small grosser, you played that picture beginning January 12, 1955, day and date at the Paradise, Academy and [2686] the Southside, isn't that correct?

A. I assume that it is.

Q. Now, the picture Her Majesty or His Majesty O'Keefe, was that a big grosser or a little grosser or medium? A. Medium.

Q. That was a medium grosser. Now, on that picture—yes, you played that picture day and date at one, two, three, four, five theatres in the Ingle-

(Testimony of Fred Greenberg.)

wood-Westchester area beginning on February 17, 1954 at the Paradise, the Southside Theatre, the Fifth Avenue Theatre, the Studio Drive-In and the Vermont Drive-In, isn't that correct?

A. I assume that it is.

Mr. Mitchell: Those are two theatres outside the area, your Honor. It was three in the area, and two outside the area.

Q. (By Mr. Corinblit): How about the picture Track of the Cat? Was that a big grosser or just a medium grosser? A. Medium.

Q. Medium grosser, all right.

A. Are you involving the other drive-in theatres that are in Gardena in this general Inglewood area?

Q. No. The only reason I listed them is—I don't have any quarrel about the drive-in theatre—the Vermont Drive-In which is a long way from the Westchester area and the Studio.

A. You named five. [2687]

Q. (By Mr. Corinblit): They just happened to be on my list, Mr. Greenberg.

A. So you read them off.

Q. Yes. Now, I want to talk about a picture, Track of the Cat, beginning September 8, 1954. The fact is you played that picture, which you describe as a medium grosser, on the 7 day availability day and date at three theatres again, the Paradise, Academy and Southside, isn't that correct?

A. I assume that it is. Let me ask you a question on that inasmuch as you are——

(Testimony of Fred Greenberg.)

The Court: I am awfully sorry, but you can't ask questions.

The Witness: I'm sorry.

The Court: Your only prerogative is to answer them.

The Witness: I'm sorry.

Q. (By Mr. Corinblit): Mr. Greenberg, in the light of these facts, I want to take you back to the period of 1950 and 1951. The fact is, is it not, it would have been perfectly good business in 1950 and 1951 to play either the big grossers, as the pictures we have named, or the medium grossers, which include some pictures we have named, or the small grossers, which I think we have got one of in that class, on three day and date instead of two day and date, isn't that correct?

A. I don't necessarily agree with you, [2688] Mr. Corinblit. In 1950 and 1951, the facts were different than your 1955 and 1956 situation because of the vast increase of population in that area.

I still contend, as I did at the outset, that when you play four theatres and break up that first dollar, that actually no one benefits. The theatres themselves do not develop enough gross to carry those overheads, and we don't benefit, as you can see from the total gross there. Now, what has happened in 1955 and 1956 with reference to Roberts and some of the other top pictures, these populations, especially in the Southside, as you very well know, are so tremendously increased in the past five years that there is a big difference.

(Testimony of Fred Greenberg.)

Q. Do you have the population figures on those increases, Mr. Greenberg?

A. Do I have them?

Q. Yes. A. I roughly know them.

Q. What is the difference in population in the Southside area in 1950 as compared with 1955?

A. I know only that it is——

Q. Can you answer that question?

A. I am not prepared to answer that sort of a question. That is not my field.

Q. Do you know the difference in population [2689] in the area of the Academy in 1950 and 1955?

A. No. I know it has increased tremendously in that particular area you asked me about.

Q. You know of your own knowledge in the area of the Academy between 1950 and 1955 the population has increased, you know that?

A. I said of the Southside.

Q. How about the Academy area?

Mr. Mitchell: Well, there isn't any Academy area. When he speaks about the Academy area, that is an indefinite question.

The Witness: That's Inglewood.

Mr. Mitchell: There isn't any such thing as an Academy area.

Mr. Corinblit: The witness has testified the reason for the difference is the increase in population, and I would like to know what he is talking about.

The Witness: I refer to the Southside, which is a fact.

(Testimony of Fred Greenberg.)

Q. (By Mr. Corinblit): I beg your pardon?

A. I referred to the tremendous increase in population around the Southside Theatre area.

Q. Now, Mr. Greenberg, in 1950 and 1951 you were playing at the Southside, weren't you?

A. I think so. [2690]

Q. And in 1955 you were playing in the Southside. A. Yes.

Q. Then that increase in population has nothing to do with the increase in the number of runs, does it?

A. Not in that particular case.

Q. All right. Is it your testimony that the number of people in the Paradise area in 1950, which has been testified to here now, yesterday, in the neighborhood of, I think, about 40,000 people, was not enough to permit your company to play a 7 day availability in that theatre day and date with the Southside and Academy, 1950 and 1951?

A. It could very well have done it, had it not been that there was another theatre in the immediate area that demanded equal opportunity, the same opportunity that was offered the Paradise, on every occasion I had to discuss that particular situation with the owner.

Q. We will get to those discussions, but the first part of your answer was it could have been, that is to say, from the population point of view, there were enough people to support a 7 day run on your pictures in the Paradise area in 1950 and 1951 day and date with the Academy and South-

(Testimony of Fred Greenberg.)

side, there were enough people? 40,000 people is enough people, 40,000 within an area of two miles, that is correct, is it not? A. Yes. [2691]

Mr. Corinblit: Your Honor, I think this is a good breaking point.

The Court: Ladies and gentlemen of the jury, we are about to take another recess. Again it is my duty to admonish you you are not to discuss this case with anyone, you are not to allow anyone to discuss it with you, and you are not to formulate or express any opinion as to the rights of the parties until this case has been finally submitted to you.

With that admonition we will now recess until 2:00 o'clock this afternoon.

(A recess was taken to 2:00 o'clock p.m.)

Thursday, August 9, 1956. 2:00 P.M.

The Court: Do you stipulate the jury are present and in the jury box?

Mr. Corinblit: So stipulated, your Honor.

Mr. Mitchell: Yes.

The Court: You may proceed.

FRED GREENBERG

having been heretofore sworn, resumed the stand and testified further as follows:

Cross Examination—(Continued)

Q. (By Mr. Corinblit): Mr. Greenberg, I have put on the board here a summary or, rather, in response to your answers that you gave to Mr.

(Testimony of Fred Greenberg.)

Mitchell's questions about the particular pictures involved—that is to say I have listed here under the name—under the word "Picture" the name of the picture that Mr. Mitchell asked you about. And opposite under "Number of picture," I have taken the release number off Warner's cut-off cards and put that opposite.

And then I have got the theatres listed—Paradise, United Artists, all Fox—that was my entry, La Tijera and Southside, and then the answers "Yes" or "No" which indicate [2693] your answers as to whether or not bids were returned.

This summarizes whether bids were returned on the pictures indicated and this is a statement, a composite of your answers and I believe it is correct. I took it down as you were testifying under Mr. Mitchell's direction. We can check it out from the forms that you have in front of you.

Mr. Mitchell: I think you should not use the term "all Fox" because his answers didn't indicate that all of the Fox theatres bid.

Mr. Corinblit: You are right on that.

Mr. Mitchell: And subject to that criticism we make no question about it, but subject to a check if there is some error.

Mr. Corinblit: Certainly. Shall we just call this "Academy"?

Mr. Mitchell: I think it was always the Academy on these pictures, as I recall it.

Mr. Corinblit: There was one group concerning Dodge City and Virginia City—017 and 018.

(Testimony of Fred Greenberg.)

Mr. Westbrook: There are a number of deviations on the Breaking Point. One bid was submitted on behalf of Fox and one on behalf of the Fifth Avenue.

Mr. Corinblit: Fox and Fifth Avenue?

Mr. Westbrook: Yes.

Mr. Corinblit: I will put down the letter "F" and "Fifth Avenue." [2694]

Mr. Westbrook: And Raton Pass at the Fox-Inglewood.

Mr. Corinblit: All right.

Mr. Westbrook: I think your comment about Dodge City and Virginia City—I think the information you have is correct.

Mr. Corinblit: No bids returned.

Mr. Westbrook: Nobody submitted any bid.

Mr. Corinblit: Then with those exceptions, the understanding will be that the reference "all Fox" really refers to the Academy, is that right, Mr. Mitchell?

Mr. Mitchell: That is right.

Q. (By Mr. Corinblit): All right. Now, Mr. Greenberg, I don't know whether you can answer this question, but I would like a stipulation on this as we go along.

You did not put into evidence, your counsel did not put into evidence who got the pictures—that is, you testified that bids were sent out and you also testified to the fact that these people returned or didn't return bids, but there was no mention made of who got the pictures on the 7 day availability.

(Testimony of Fred Greenberg.)

We have checked that out from the cut-off cards and I would like a stipulation on that point.

On the picture *Breaking Point*, that is the first one——

Mr. Westbrook: Fox-Inglewood got the bid.

Mr. Corinblit: I will draw a circle around the [2695] theatre that won the picture—006.

Mr. Mitchell: Let us use the names. I can't deal with the numbers.

Mr. Corinblit: *Three Secrets*. My record shows that the Academy and the Southside got the picture.

Mr. Mitchell: Correct.

Mr. Corinblit: *Rocky Mountain*, the Academy and the Southside got that picture.

Mr. Mitchell: Correct. [2696]

Mr. Corinblit: On *Glass Menagerie*, the Academy and the Southside got the picture?

Mr. Mitchell: Correct.

Mr. Corinblit: On *Breakthrough*, the Academy and the Southside got the picture?

Mr. Mitchell: Correct.

Mr. Corinblit: On *West Point Story*——

Q. (By Mr. Corinblit): Would you check *West Point Story* to see whether Southside put in a bid on that, Mr. Greenberg?

Mr. Mitchell: No, they did not.

Mr. Corinblit: No bid put in?

Mr. Mitchell: No.

Mr. Corinblit: All right. On that the Academy and the Southside got the picture.

(Testimony of Fred Greenberg.)

Mr. Mitchell: That's right.

Mr. Corinblit: On the picture Highway 301, the Academy and the Southside got the picture?

Mr. Mitchell: That's right.

Mr. Corinblit: On the picture Dallas, the La Tijera got the picture.

Mr. Mitchell: No. I think that is wrong.

Mr. Corinblit: All right.

Mr. Mitchell: I think the United Artists got it.

Mr. Corinblit: Dallas?

Mr. Mitchell: Yes. [2697]

Mr. Corinblit: We will pass that and come back to it in a minute. We will check the cut-off card.

On the picture Operation Pacific, La Tijera and Southside got the picture.

Mr. Mitchell: My information is the United Artists and Southside got it.

Mr. Corinblit: We will check that, both Dallas and Operation Pacific.

On the picture Storm Warning, the Academy and Southside.

Mr. Mitchell: That's right.

Mr. Corinblit: On the picture Enforcer, the United Artists, Imperial, La Tijera and Southside.

Mr. Mitchell: That's right.

Mr. Corinblit: On the picture Raton Pass, the United Artists and Southside.

Mr. Mitchell: No. I have United Artists playing that exclusively.

Mr. Corinblit: Alone? We will pass that and come back to it.

(Testimony of Fred Greenberg.)

On the Dodge City-Virginia City, double bill, did the Fifth Avenue win the picture?

Mr. Mitchell: That's right, exclusively.

Mr. Corinblit: All right. On Lullaby of Broadway, the La Tijera and the Southside. [2698]

Mr. Mitchell: That's right.

Mr. Corinblit: On Sugar Foot, the La Tijera and Southside.

Mr. Mitchell: No. It is La Tijera and Fifth Avenue.

Mr. Corinblit: And Fifth Avenue?

Mr. Mitchell: That's right.

Mr. Corinblit: We will check that.

Q. Now, on the picture *Only the Valiant*, Mr. Greenberg — before I ask those questions, Mr. Greenberg, will you take a look at *Only the Valiant*, your records, and see if it isn't true that — well, withdraw that.

It is a fact, is it not, that you did not send to the Southside any request to bid on the picture *Only the Valiant*?

A. That's right. I see no record of it.

Mr. Corinblit: So this wasn't sent. But on the award the La Tijera and the Southside got the picture.

Mr. Mitchell: No. The picture *Only the Valiant* was negotiated to the Southside alone.

Mr. Corinblit: Just the Southside?

Mr. Mitchell: Yes.

Mr. Corinblit: We will mark that down and check it.

(Testimony of Fred Greenberg.)

Q. The same thing is true for the next picture, Communist For the FBI, there was nothing sent to the Southside, [2699] was there?

A. I will look——

Mr. Mitchell: I recall his so testifying.

Mr. Corinblit: All right, not sent.

Q. You didn't send anything to the La Tijera either on that one, did you, is that right, no bid sent to the La Tijera?

A. I started to look it up and someone stopped me.

Q. The picture Communist For the FBI. It is near the end of your group? A. What group?

Mr. Mitchell: That may be one of those that is missing.

The Witness: I don't find it at all, Mr. Corinblit, not in this group.

Mr. Mitchell: In any event, there were no bids sent on that at all.

Q. (By Mr. Corinblit): But on the question of whether they were sent, you have no records of bids being sent? A. I know nothing about it.

Q. All right. A. I have no record here.

Mr. Corinblit: Why don't we put this down, then, as no record.

Mr. Mitchell: Yes. In line with what was being [2700] done on all the other pictures, I think that is just a missing record.

Mr. Corinblit: I don't know about this time what was happening either, but I will put down "no record."

(Testimony of Fred Greenberg.)

Q. With respect to the Imperial, you have no records either? A. On that picture?

Q. On that picture, yes.

A. I have no records of any sort.

Q. Well, you have records on the Paradise, United Artists and Fox, is that right?

A. What picture are you talking about?

Q. Communist For the FBI.

A. I couldn't find that. Oh, yes, I have that.

Q. There are only three theatres, Paradise, United Artists and Fox, is that right?

A. The United Artists, the Academy, La Tijera, Imperial and Paradise.

Q. Mr. Greenberg, I mean do you have bid forms there. A. Returned?

Q. No. Bid forms that indicated you sent out bids to the La Tijera on the picture Communist For the FBI. A. No.

Q. You don't have any forms?

A. No. [2701]

Q. You don't have information on the Imperial, either, do you, that is, you have no bid forms showing you sent it to the Imperial Theatre?

A. No, I don't have copies of the bid.

Q. No record on the Imperial. You do have a record you sent a bid form to the Paradise, United Artists and Academy, right?

A. Yes, Academy, United Artists and the Paradise.

Q. All right. Now, on the picture Goodbye My

(Testimony of Fred Greenberg.)

Fancy, you did not send a bid form to the Southside? A. I don't think so.

Mr. Corinblit: The theatres that got the picture were the La Tijera and Southside, on Goodbye My Fancy. Is that stipulated to, Mr. Mitchell?

Mr. Mitchell: And United Artists. That was a three-theatre play-off.

Mr. Corinblit: All right. La Tijera and United Artists.

Q. On the picture Along the Great Divide, will you take a look at that, Mr. Greenberg? Do you have any information that a bid form was sent to the Southside on that picture?

A. Not indicated on this form.

Mr. Corinblit: All right. The theatres that got the picture are the Southside and the La Tijera, is that right, [2702] Mr. Mitchell?

Mr. Mitchell: That's right.

Mr. Corinblit: All right.

Mr. Mitchell: There is one other thing, in order to complete this picture that you are bringing in here, as long as I have stipulated to these other facts rather than having you produce them, I want you to stipulate with me, if you will look at your Exhibit 45-J, that the following pictures during the time of Marco's operation played the 14 day availability at the Paradise following the play in the Southside, to-wit, Three Secrets——

Mr. Corinblit: Mr. Mitchell——

Mr. Mitchell: Just a minute.

Mr. Corinblit: All right, go ahead.

(Testimony of Fred Greenberg.)

Mr. Mitchell: Three Secrets, Rocky Mountain, Glass Menagerie, Breakthrough, and the West Point Story. [2703]

Mr. Corinblit: That they played on 14 day availability in the Paradise.

Mr. Mitchell: Yes, following this play you have on the board.

Mr. Corinblit: Subject to correction I will so stipulate.

Mr. Mitchell: Thank you.

Mr. Corinblit: Now, can we go back for a minute to the pictures that we have had some question about, and that is Dallas and Operation Pacific.

For Dallas my records show that the La Tijera got the picture.

Mr. Herscher: United Artists.

Mr. Corinblit: Your record shows United Artists and that is correct.

With reference to Operation Pacific, the question is did the La Tijera and the Southside get the picture or did somebody else?

Mr. Herscher: Southside and United Artists.

Mr. Mitchell: That is right.

Mr. Corinblit: Then we have a question on Raton Pass. What theatre got that?

Mr. Herscher: Southside and United Artists.

Mr. Corinblit: Is that correct?

Mr. Mitchell: Just a minute. That doesn't agree with the record I have. Just a minute until we make another check. [2704]

(Testimony of Fred Greenberg.)

Mr. Corinblit: All right. We agree on the Southside.

Mr. Mitchell: No, we don't. I say that does not agree with the record that I have. Let me check it.

Mr. Corinblit: You don't agree with the Southside?

Mr. Mitchell: Hold the boat.

Mr. Westbrook: What is the play date on Raton Pass?

Mr. Corinblit: I can check that for you.

Mr. Mitchell: That is correct.

Mr. Corinblit: Our record is correct?

Mr. Mitchell: Yes.

Mr. Corinblit: All right. So that is the Southside and the United Artists?

Mr. Mitchell: That is right.

Mr. Corinblit: Now, we have two others, the picture Sugarfoot. Our record shows the La Tijera and the Southside.

Mr. Mitchell: Let me check that again.

Mr. Herscher: Southside is correct.

Mr. Mitchell: That is correct.

Mr. Corinblit: All right. The La Tijera and the Southside and finally on the picture Only the Valiant, my record shows that the Southside got it and the La Tijera. I thought you said you thought the Southside got the exclusive.

Mr. Mitchell: Let us check that with another record we have here.

Mr. Corinblit: All right. [2705]

(Testimony of Fred Greenberg.)

Mr. Mitchell: You are correct, the Southside and the La Tijera.

Mr. Corinblit: Right. Now, let the record show that I have circled on this exhibit the theatres that received the pictures on 7 day availability.

Q. Now, after the picture beginning with the picture *Only the Valiant*, the next four pictures, it is shown that you didn't send any bids to the Southside Theatre at all. That is, you didn't send any bid requests. That is a fact, is it not, Mr. Greenberg, a fact confirmed by the fact that in your bid forms you don't indicate for any clearance affecting the Southside? A. That is right.

Q. Now, you will notice, Mr. Greenberg, on this schedule it is shown that, beginning with the picture *Three Secrets*—well, on the picture *Three Secrets* the Southside did not submit any bid but it was awarded the picture day and date with the Academy. That is correct, isn't it?

A. The picture was negotiated with them, yes.

Q. Now, that same thing is true with respect to every picture that the Southside won—that is to say, they didn't submit a bid on a single picture beginning with *Breaking Point* and ending with *Along the Great Divide* and that runs from about September to May, September '50 to May of 1951. No bids were submitted by the Southside, but in every case when they [2706] won the picture and they won—

The Court: Won?

(Testimony of Fred Greenberg.)

Mr. Mitchell: They didn't win the picture. They negotiated for it.

The Court: "Won" is the wrong word.

Q. (By Mr. Corinblit): They got to play the picture 7 day availability day and date with the other theatre or theatres, but they did not submit bids. That is correct, isn't it?

Mr. Mitchell: They were just offering one picture on bids, your Honor, and they were negotiating on the second one.

The Court: On the same availability?

Mr. Mitchell: Yes, that is right.

Q. (By Mr. Corinblit): Now, Mr. Greenberg, let us take a look at these requests. I will start with the first one. Here is Rocky Mountain. I will show you Defendants' Exhibit—Warner's Exhibit H-6 in evidence, I believe it is in evidence—yes, and see if this is correct.

You sent out a bid form on that picture to all of the theatres in the Inglewood-Westchester area including the Paradise, La Tijera, Fox West Coast for its theatres and the Southside, is that right?

A. Right.

Q. You sent the bids out and in the place marked [2707] "clearance" you said that the maximum clearance to be granted shall be 7 days following Los Angeles first run closing clear of United Artists, Inglewood, La Tijera, Imperial, Southside and Paradise. Right? A. Right.

Q. And then you made a contract with the Academy? A. Right.

(Testimony of Fred Greenberg.)

Q. And this is the contract, Exhibit H-6?

A. That is what it amounts to.

Q. So in this contract the Academy Theatre had clearance over all the theatres listed, correct?

A. Right.

Q. Now, then, in other words, when the Academy won that bid, they had the right under this contract, to the exclusive run over all of the theatres listed there, isn't that right?

A. That is right.

Q. Now, what they did later on then was to waive their right in order to permit the Southside to play day and date, is that right?

A. Well, I don't know whether you would call it waiving or not, but at least we negotiated with the Southside for an additional run.

The Court: May I ask you a question? At that time did you consider the Southside Theatre in competition? [2708]

The Witness: Certainly not strongly in competition with downtown Inglewood.

The Court: As you understand the term, is it your opinion that during this period of time the Southside Theatre was in substantial competition with downtown Inglewood?

The Witness: Well, they were in competition as every theatre in that area is in competition one with another, but certainly not to the degree that other theatres closer to them were.

The Court: Now, will you explain to the jury

(Testimony of Fred Greenberg.)

what you understand by the term "substantial competition"?

The Witness: A lot.

The Court: Explain your definition of substantial competition.

The Witness: Where it would affect them adversely to the extent that they might show a lesser profit or *nor* profit at all.

The Court: Is that your understanding of the meaning of "substantial competition"?

The Witness: Well, it would certainly affect them adversely at the box office if it was in substantial competition to the extent—I couldn't determine that without checking the grosses during that time.

The Court: I am not talking about grosses. I am talking about the general situation. [2709]

Does substantial competition in your mind depend entirely upon box office receipts?

The Witness: That is right.

The Court: All right. How much in percentage do you have to have in order to establish substantial competition? One per cent or 50 per cent?

The Witness: Well, depending upon the margin that is left for profit. Might be 10 or 15 per cent. That would be a guess. I wouldn't know.

The Court: You don't know what the basis is that you use for determining whether two theatres are in substantial competition except that it must affect the box office?

The Witness: That is right.

(Testimony of Fred Greenberg.)

The Court: But you don't know how much?

The Witness: No, because there would be varying degrees of it, depending upon what a house would be grossing and how it would be affected after another house opened against it day and date.

The Court: But it is your opinion now at this particular time that the Southside Theatre was in substantial competition with the theatres in downtown Inglewood?

The Witness: I never considered them seriously in competition with downtown Inglewood, being out in a tremendous area by itself, sir, and east of town.

The Court: Do you want to say now they were not in substantial competition?

The Witness: Not in serious substantial competition. I say they were in competition with each other.

The Court: All right.

The Witness: But to what degree is pretty hard for me to determine.

The Court: I might say for your benefit that no two witnesses have testified the same about this term substantial competition.

The Witness: It is elusive.

Q. (By Mr. Corinblit): Now, Mr. Greenberg, let's not talk about downtown Inglewood now, because you don't consider the Academy in downtown Inglewood, do you?

A. Well, I consider it serving Inglewood.

Q. All right. Was it your opinion that the

(Testimony of Fred Greenberg.)

Academy and the Southside were in substantial competition in 1950 and 1951?

A. I think the Southside might have siphoned off some of the business from the Academy. To what extent, I don't know.

The Court: That is not an answer. It is no disgrace to say you don't know, but if you try to answer, you have to answer yes or no.

The Witness: Let me save myself from disgrace then and I will say I don't know. [2711]

Q. (By Mr. Corinblit): How about the Paradise and the Southside, were they in substantial competition in 1950 and 1951?

A. I don't know.

Q. You don't know?

A. I will save myself the disgrace.

Q. Yesterday there was——

A. I would say no.

Q. You say no?

A. I would say yes, probably they were in competition, because I think they were closer to each other than the area serviced by the Academy.

Mr. Corinblit: Now, counsel, it is stipulated, is it not, that the Paradise was further from the Southside than the Academy was from the Southside?

Mr. Mitchell: I don't remember what the figures are, but they are in the record, whatever they are.

Mr. Corinblit: The figures of 3½ miles and 4½ miles, isn't that right, Mr. Westbrook?

Mr. Westbrook: Counsel, you are confused. You

(Testimony of Fred Greenberg.)

asked the witness about the Paradise and Southside, and now you are talking about the Academy and Southside. I don't know, frankly, what you are talking about.

The Court: Isn't it true that the stipulation as to distance that you have entered into shows that the Paradise [2712] Theatre is further from the Southside than the Academy?

Mr. Westbrook: I think without any question that is true, your Honor, but that isn't what Mr. Corinblit asked Mr. Greenberg about.

Mr. Corinblit: Your next question is this, your Honor. It is stipulated, and I think I have the figures here, that the distance from the Paradise to the Academy is approximately $3\frac{1}{2}$ miles. Is that right, counsel?

Mr. Westbrook: Paradise to the Academy is approximately $4\frac{1}{2}$ miles, isn't that right?

Mr. Corinblit: $4\frac{1}{2}$ miles. You are right. All right. The distance from the Academy to the Southside is approximately $3\frac{1}{2}$ miles.

Mr. Westbrook: I think the figure is 3.6. I think if you clock it, you will find it is further, but I stipulated to 3.6 so we could have some agreement about mileages in this case.

Q. (By Mr. Corinblit): Mr. Greenberg, you have heard the stipulation that the Academy to the Southside is approximately 3.6 miles, the Academy to the Paradise is approximately 4.5 miles, so that the Paradise is further from the Academy than the Southside from the Academy. Now, is it your testi-

(Testimony of Fred Greenberg.)

mony that the Paradise and the Academy were in substantial competition? A. I don't know.

Q. What is your testimony as to whether the Academy and the Southside, 3.6 miles apart, were in substantial competition?

A. I think I answered that. I don't know.

Q. All right. Now, yesterday, your counsel, counsel for defendants, put on a witness who drew these circles, drew some circles for the jury. This is between the Southside and the Paradise. Let me ask you this question before we go any further. In your opinion were the Paradise and the Southside in substantial competition in 1950 and 1951? The testimony by Mr.—

Mr. Mitchell: Let's not argue. You have asked a question and, your Honor, then he goes on and argues and argues.

Mr. Corinblit: All right.

The Court: You shouldn't argue, and I don't think you should tell him what other witnesses have testified to. He is entitled to his opinion, and if he says he doesn't know, that ends the situation.

Q. (By Mr. Corinblit): I want to get the answer to this question now. Were the Paradise and Southside in substantial competition in 1950 and 1951?

A. I think I answered that I don't know.

Q. All right. With respect to this group of pictures listed on the schedule, when you had sold the first run to the [2714] theatre indicated, for example, the Academy, and the Academy had the right

(Testimony of Fred Greenberg.)

to exclude every theatre from playing day and date, and then you sold the picture to the Southside, did you have any discussions with the people at Fox West Coast in order to get them to waive the clearance?

A. No, sir, because I did not negotiate with Fox West Coast. Those dealings, as I told you, were done by Mr. Herbel.

Q. Mr. Herbel? A. Yes, sir.

Q. You had no knowledge as to any discussions that were had with Fox West Coast about releasing clearance?

Mr. Mitchell: That assumes, your Honor, that Warner had a discussion with Fox West Coast, and I object to it on that ground.

The Court: Sustained.

Mr. Corinblit: Your Honor, there had to be some kind of talk. They had the right under the contract to clearance.

Mr. Mitchell: Maybe Warners just went over their dead bodies and did what they chose to do. There doesn't have to be anything.

Q. (By Mr. Corinblit): Do you have any knowledge, Mr. Greenberg, one way or the other, as to whether anybody talked to Fox? [2715]

A. I would assume they did, but I didn't.

Q. You don't know whether anybody else did?

A. I would assume they did, obviously.

Q. In other words, you assume they did talk to Fox and get Fox to waive clearance?

A. I don't know about that.

(Testimony of Fred Greenberg.)

Mr. Mitchell: I object to the question on the ground it has been asked, and it is immaterial.

The Court: The witness says he doesn't know. Let's go to another matter and maybe we can find some phase of this question that he knows or remembers something about.

The Witness: It isn't too easy.

Q. (By Mr. Corinblit): Mr. Greenberg, did you ever have any discussion with Fox to ask them if they would waive clearance over Paradise?

A. Did I ever have a discussion with Fox?

Q. Yes.

A. About waiving over Paradise? No, sir, I don't remember any such discussion. I remember some discussions with the Paradise.

Q. Yes. We will get to those in a minute. Mr. Greenberg, turning to the picture *Three Secrets*, after a bid had been awarded to the Academy Theatre, did you have any discussion with representatives of the Paradise to ask them if they would play *Three Secrets*? Do you recall any distinct conversation? [2716]

A. About one specific subject?

Q. Yes.

A. That would be a rather difficult thing to reach for.

Q. So you don't recall? A. No, sir.

Q. Do you have any recollection of a conversation with representatives of the Paradise about the picture *Rocky Mountain* after you had sold the pic-

(Testimony of Fred Greenberg.)

ture to the Academy Theatre on a 7 day availability?

A. I have had many discussions with the operators of Paradise with reference to many pictures, but to pinpoint one thing is rather a difficult thing to do after four or five years has elapsed. I can answer that for you in a very definite way that you might consider general, but I have discussed the matter of releasing pictures in that area with Mr. Lehman many times and Mr. Johnson many times, and in every instance they were given an equal opportunity to bid for that picture, to compete with, not necessarily the houses you have been pointing out so much as the point that was made by the La Tijera, who insisted upon competing on each individual subject on an equal basis as it was offered Mr. Paradise in every case.

Q. Mr. Greenberg, I want to get a very specific question answered on what your procedure was. As you defined it [2717] here, you would first send out bid requests, and in the bid any man who won the bid got clearance over all the theatres that had been enumerated from the Paradise to the Southside.

A. Unless he designated otherwise.

Q. Unless he designated otherwise. Now, after the bid on the print was awarded, then you said you went out and negotiated to license second day and date runs. Now, I want to ask you whether or not on the second run of the picture Rocky Mountain you remember having a conversation with anyone at the Paradise.

(Testimony of Fred Greenberg.)

A. I told you I don't remember any distinct—any conversation about any one single motion picture.

Q. All right.

A. I remember many conversations with them, however.

Q. All right, but you don't recall, you cannot give us any specific conversation about any of the pictures listed upon this board for the second run, is that correct?

A. There was a lot of pictures under the dam since then.

Q. But you don't have any recollection?

A. No, sir.

Q. In evidence in this case, Mr. Greenberg, is a letter dated March 26, 1951, from Mr. Lehman to you with respect to the picture *Born Yesterday*.

A. That was not my picture.

Q. The letter is to you, Mr. Greenberg. [2718]

A. Oh, I see. Well, this isn't my picture. I wish we had a picture like that that did the gross this *Born Yesterday* did. That was a picture that did a tremendous gross nationally and locally.

Q. You remember, don't you, that certainly after this letter Mr. Lehman was writing or talking to you about negotiating for the Warner pictures after you had awarded them on a bid, isn't that right?

A. Mr. Lehman discussed negotiating, never bidding, because he refused to negotiate or bid in competition with the La Tijera, who insisted upon

(Testimony of Fred Greenberg.)

competing with him for whatever product or picture was available from us.

Q. Now, is it your testimony that the La Tijera insisted on bidding for the second print?

A. Any print.

Q. All prints?

A. Any print that would—inasmuch as he considered himself in direct competition, more so than with any other theatre, that is with reference to the La Tijera and the Paradise, he declared himself, Mr. Johnson declared himself, and subsequently—I mean Kupper first and then Johnson, I think it was, and in my discussions with Mr. Lehman he wanted to negotiate without any regard for competition. He wanted what we called a free ride.

Q. Is that what you were giving the Southside? [2719]

A. Substantially.

Q. In other words, that is what you were giving the Southside. A. Pretty much.

Q. The La Tijera didn't have any objection to the Southside playing day and date with the Academy. A. Evidently not.

Q. But the La Tijera objected to the Paradise playing day and date with the Academy?

A. Feeling they were in stronger competition with the other.

Q. But the La Tijera didn't get the pictures. Why would they object to the Paradise playing day and date with the Academy?

(Testimony of Fred Greenberg.)

A. That didn't change the position at all of the La Tijera. If we were to make three runs available, Mr. La Tijera would then insist if we were to make a picture available in that area, if we were to open up a third run, the Paradise would then be required to bid against the La Tijera because of the request of the account, not because of our request.

Q. You don't like bidding?

A. Yes and no. Whenever it suits the purpose. We were probably the last company in the business to enter into bidding, and if it makes my job easier, I like bidding. [2720]

Q. Well, at this time, was your company in favor of bidding?

A. They were just starting out bidding. I think about that time they were the last company, as I said, to enter into bidding. They discouraged bidding.

Q. I want to get this clear, Mr. Greenberg, that when the Academy won the picture the La Tijera objected to the Paradise getting the second print?

A. Not all all. They didn't object to it. If we were going to open up a bid, I certainly would take the Southside in preference to either the La Tijera or the Paradise because of the greater revenue to us.

Now, if we were going to make a picture available and the Southside wasn't interested and we had this second run, I would then be required—I was on the horns of a dilemma. If I moved one

(Testimony of Fred Greenberg.)

way or the other, the one man refused to bid, Mr. Paradise refused to bid.

Q. Just like the Southside?

Mr. Mitchell: Let him finish his answer.

The Witness: I don't think that has anything to do with it in this particular case because the Southside wasn't involved in this particular bid of competitive feeling. There was strong feeling insofar as the Paradise and the La Tijera was concerned.

I was told bluntly and flatly that if a picture—if we [2721] were going to negotiate with the Paradise, that the operators of the La Tijera insisted upon competing for that run through negotiation or bidding or through any other manner we cared to market the picture. And they said that they would give us more money than the Paradise would.

I in turn would talk to Mr. Lehman at that time, and he wanted to buy the pictures regardless of the feelings of the operators of the La Tijera under the circumstances. It was as simple as that.

I had to pick out which jail I was going to go to.

Q. (By Mr. Corinblit): Now, you understand, Mr. Greenberg, that we are talking here about the second print and not the third.

A. Yes, I know what you are talking about.

Q. I want to get this clear. It was because of the objections of the La Tijera that you would not sell a print day and date with the Academy Theatre in Inglewood?

A. Well, of course, as you know, Mr. Corinblit,

(Testimony of Fred Greenberg.)

these bidding forms indicate a clearance over all of those theatres, and I admit that we violated them insofar as the Southside was concerned.

There was no objection raised. They returned considerable money to our company and since we got away with it, we got away with it. It is a pretty good deal when you get away with it. [2722]

Q. When you say "you got away with it," Mr. Greenberg, you got away with it by the help of Fox West Coast, didn't you?

A. I just say we got away with it. I didn't need any help.

Q. That is to say Fox West Coast never protested to you? A. Not that I remember.

Q. When you played day and date at the Southside? A. That is right.

Q. Now, the real fact is, Mr. Greenberg, the company that prevented you from playing day and date with the Academy was Fox—they wouldn't waive clearance over the Paradise?

A. Again I come right back, Mr. Corinblit—you are bringing up the one point, and I think it is so simple. It is just as simple as it can be because in every case and under every circumstance when a picture was made available, if there was a run to be made available to one of two theatres which you would have me, or the Paradise would have me, rather, deny the right to the La Tijera to buy the picture, giving me better terms with clearance over the Paradise, but the Paradise wanted that right with a free ride.

(Testimony of Fred Greenberg.)

Well, I couldn't arrange that for them.

Q. Now, Mr. Greenburg, I think you must misinterpret my question. My point is that having sold the picture to [2723] the Academy first run with clearance over the Paradise—— A. Yes.

Q. ——the only way you could sell to the Paradise was to get the Academy to release clearance and the Academy wouldn't release clearance?

A. That is right. But under those circumstances, we come right back to the same proposition that I had the La Tijera to contend with.

Q. Now, let us talk about the La Tijera for a moment.

Did you ever ask the La Tijera and the Paradise to bid only against each other? A. Yes.

Q. You did? A. Yes.

Q. All right. When did you do that?

A. Oh, I don't know just when, but I know very definitely that Mr. Lehman refused to bid just against the La Tijera.

Q. Just against the La Tijera? A. Yes.

Q. Do you have a letter on that or a memorandum? A. No.

Q. On that point?

A. No, but a very good memory on it.

Q. Now, did you talk to Mr. Lehman about that?

A. Many times. [2724]

Q. You talked to Mr. Lehman many times?

A. Yes.

Q. About him bidding only against the La Tijera?

(Testimony of Fred Greenberg.)

A. I don't know how to make this any more clear than what I have done.

I have told you that in every case where a picture was to be made available, regardless of whether it was one, two or a dozen runs, if that picture was to be made available to the Paradise or we were to negotiate with them, the La Tijera, Mr. Kupper or Mr. Johnson would insist upon the right to compete with that particular theatre.

Q. My question to you, Mr. Greenberg, again is—I thought you answered it but maybe you want to change your answer, and that is whether or not you ever said to Mr. Lehman: "I will let you bid for the second or third print just against the La Tijera." A. It amounted to that.

Q. You did say that to Mr. Lehman?

A. I say it amounted to that under any circumstances. I asked him if he wanted to compete with the La Tijera for a run.

Q. Now, did you say to Mr. Lehman—— [2725]

A. Pardon me. I can't ask questions. Go ahead.

Q. Did you say to Mr. Lehman that if you will give me \$1500, if you will give me more than the La Tijera I will let you have the print?

A. That would be auctioneering.

Q. And you don't do that?

A. No, sir, that is not very ethical nor decent nor good business.

Q. Now, in fact, Mr. Greenberg, the only basis upon which you would permit the Paradise to ob-

(Testimony of Fred Greenberg.)

tain a picture from Warner's on the 7 day availability was if it entered into bidding, isn't that correct?

A. If they provided me with the best bid.

Q. But that was the only way that the Paradise could obtain a picture, was to win it by bidding?

A. Right.

Q. But the Southside Theatre got the picture without bidding, right? You can answer that "Yes" or "No." A. They got them.

Q. Now, I think, Mr. Greenberg, Mr. Mitchell asked you about some kind of a relationship between Mr. Herbel, who is now dead, and Mr. Wolff.

I am sure you didn't mean to make any inference whatsoever that Mr. Herbel, who is now deceased, did anything incorrect in his dealings with Mr. Wolff? [2726]

A. I never knew of Mr. Herbel to do anything that he didn't feel to be honorable. He might have made a lot of mistakes and I think I will confess to a few myself.

Q. And you didn't mean to infer that Mr. Wolff in his dealings with Mr. Herbel ever sought to do anything incorrect or improper?

A. I would like to think not.

Q. You do think not?

A. I would like to think so. I do think not.

Q. I would like to turn for a minute, Mr. Greenberg, to the facts surrounding the initial contact between you and the Paradise Theatre.

(Testimony of Fred Greenberg.)

I want to call your attention to the month of March, 1950.

A. Was that prior to the opening of the Paradise?

Q. Yes. The Paradise Theatre opened in August, 1950, and this was in March, 1950.

Do you remember that Mr. Schreiber and his son came to the offices of Warner Bros. and talked to you and Mr. Herbel about pictures for the Paradise Theatre?

A. I remember something of having had some discussion with Mr. Schreiber.

Q. And do you remember that at that time Warners took the position that the only way that the Paradise could obtain 7 day pictures was to bid?

A. Yes.

Q. Now, at that very moment when you were telling the Paradise that the only way they could obtain pictures was to bid, in fact you were selling your pictures on the 7 day availability in the Inglewood-Westchester area without bidding, isn't that correct? A. That is right.

Q. Now, that answer to my question is different than the answer you gave me when I took your deposition, is it not? A. I don't know.

Q. You don't remember when I took your deposition and asked you this same question that you told me that in March of 1950 and prior thereto, Warners were selling their 7 day pictures on bidding. You don't remember that?

A. Do you want me to tell you about our first

(Testimony of Fred Greenberg.)

meeting with Mr. Schreiber and he didn't discuss the matter of 7 day when he first came into my office. You are talking about the first time Mr. Schreiber came in to discuss product with me?

Q. Now, I am talking about, Mr. Greenberg, the fact that when I took your deposition in June of this year and asked you whether as of March, 1950 and prior thereto you were selling your pictures on a bidding basis, you said you were.

A. Well, we weren't selling them—formal bidding, you mean? [2728]

Q. Any kind of bidding.

A. Again, Mr. Corinblit, I will have to come back to the one thing I have been trying to get across to you and I seem to be somewhat unable to get this story across, that the word "bidding" or "competing" came into our discussion—it was because of the attitude of the operators of the La Tijera Theatre.

Now, if any discussion was involved concerning whether or not Mr. Schreiber or anybody else who was booking or buying for him, was to buy pictures he would have to consider the La Tijera as an active and vigorous competitor, who had their own fine theatre and their own interests at heart.

Even Mr. Schreiber did and he has a right to, but I couldn't choose sides. We had to do it fairly.

Q. Mr. Greenberg, when I took your deposition a month or two ago and asked you how you were selling pictures in the Inglewood-Westchester area

(Testimony of Fred Greenberg.)

in 1950, you told me that you were bidding at that time, is that right?

A. I would have to look at my deposition.

The Court: I suggest counsel show the witness his deposition.

The Witness: I don't know.

The Court: And if you wish to and it is impeachment, you can read it to the jury, but don't argue with the witness.

Q. (By Mr. Corinblit): Mr. Greenberg, I will show you a [2729] copy of your deposition at page 16 and ask you to look at line 13 or line 14 through line 23.

(Handing document to the witness.)

The Witness: Well, the question is:

"Well, I don't know—" just a minute.

The question is:

"What would you have to look at?"

"A. Well, I don't know what I would have to look at. The bidding forms.

"Q. To see whether there was bidding during that period?"

"A. Yes. It indicates it was a bidding situation insofar as clearance is concerned, but I would have to take a look and see how each one of these pictures was marketed to be able to give you an answer as to why each one of them—generally I would say it was because of the better deals out of the La Tijera in that particular area."

Is that how far you want me to go?

Q. (By Mr. Corinblit): Yes.

(Testimony of Fred Greenberg.)

A. Where did I say something different in there from this testimony?

Q. Is it your testimony that there was bidding in March of 1950 or that there was not?

A. I had some information which I must have gotten off [2730] of the records because I certainly couldn't rely on my memory.

Q. Now, do you remember what records we looked at at that time? A. No, I don't. [2730-A]

Q. I will show you, Mr. Greenberg, cut-off card for the La Tijera Theatre, 1949 and 1950 season, which is also marked Exhibit 1-A in your deposition, which document has already been admitted in evidence.

Now, I call your attention to the words down in the left-hand corner.

A. "Bidding situation."

Q. Yes.

A. That is where I got my information.

Q. All right. Was that bidding information deliberately put on there, Mr. Greenberg?

A. What do you mean?

Q. That is, was there bidding at that time?

A. I told you I did not remember.

Q. Now do you remember? You don't remember now? A. Formal bidding?

Q. Any kind of bidding.

Mr. Mitchell: There is a difference in Warner Bros. between formal bidding and competitive negotiations, and this type of—Mr. Corinblit knows that, and this type of examination leads to confusion

(Testimony of Fred Greenberg.)

rather than light. I object to it upon the ground that it is argumentative.

The Court: Overruled.

Q. (By Mr. Corinblit): Was there bidding? You can answer that and then if you want to tell us what kind of bidding there [2731] was, that's all right, too.

A. That indicates there was some sort of bidding.

Q. Some sort?

A. Yes. It might very well have indicated exactly what I have been trying to get across to you, and I seem to be ineffective.

Mr. Corinblit: Your Honor, this might be a good time for the recess.

The Court: I suggest to the witness that it is not important what you get across to Mr. Corinblit. It is important what you get across to the jury, because Mr. Corinblit is not deciding this case. The jury is deciding the case.

The Witness: I hope I have got it across to the jury.

The Court: Ladies and gentlemen of the jury, we are about to take another recess. Again it is my duty to admonish you you are not to discuss this case with anyone, you are not to allow anyone to discuss it with you, and you are not to formulate or express any opinion as to the rights of the parties until this case has been finally submitted to you.

With that admonition court will now stand in recess until 10 minutes after 3:00.

(Testimony of Fred Greenberg.)

(Recess.)

The Court: Is it stipulated the jury is present in [2732] the box?

Mr. Corinblit: So stipulated, your Honor.

Mr. Mitchell: So stipulated.

The Court: You may proceed.

Q. (By Mr. Corinblit): We were talking, Mr. Greenberg, about the situation as of March, 1950 when Mr. Schreiber and son came in to see you and Mr. Herbel about pictures for the Paradise, and we were talking about what was at that time the manner in which Warners was selling its pictures.

Now, in fact, you knew that at the very moment, at that very moment there was in the Inglewood-Westchester area an arrangement between Fox, La Tijera, United Artists and your company and other companies whereby your pictures were to go to the La Tijera and Imperial day and date, you knew that, didn't you? A. No, sir.

Q. You had a suspicion about it.

A. I don't remember any suspicion.

Mr. Mitchell: What period of time are we talking about now?

Mr. Corinblit: At the very time Mr. Schreiber made his visit to Warners in March, 1950.

Q. I will ask you, Mr. Greenberg, to look at your deposition at page 23 and ask you to examine the question at line 8 and your answer at line 12.

The Court: Read it to yourself. Don't read it aloud.

(Testimony of Fred Greenberg.)

The Witness: I'm glad you said that, your Honor.

Q. (By Mr. Corinblit): Mr. Greenberg, does that refresh your recollection that in fact in March, 1950 you had a suspicion that there was such an arrangement there?

A. It doesn't so state in my deposition.

Q. All right. I am reading now from the deposition, page 23.

"You state that as of 1949 and 1950 you had no opinion at that time that there was an arrangement between the exhibitors in that area whereby Warners product would go to the La Tijera on the 7 day availability?"

"A. I may have been suspicious at the time. I don't remember."

Now, did you have——

Mr. Mitchell: Wait a minute. I want to go on and read a little more.

Mr. Corinblit: "What did you do about the suspicion?"

"A. What could I do about the suspicion?"

"Q. What did you do?"

"A. Nothing. I just continued to submit bidding forms and make the pictures available to [2734] everyone in the area."

Q. Now, do you remember, now Mr. Greenberg——

Mr. Corinblit: Do you want to read any further, counsel?

(No response.)

(Testimony of Fred Greenberg.)

Q. (By Mr. Corinblit): It is a fact that you suspected at that time that there might have been some arrangement among the exhibitors?

A. I say I may have had.

Mr. Mitchell: I object that it is immaterial what he suspected, your Honor. We want facts, not suspicions.

Mr. Corinblit: Your Honor, in this particular case, what Warners does may depend upon what they believe, as well as whether in fact there was—we have had plenty of testimony about the arrangement.

Mr. Mitchell: What Warners does isn't going to depend upon any suspicion of Mr. Greenberg's at that time.

The Court: Read the question. Objection overruled.

(Question read.)

Q. (By Mr. Corinblit): Is that right, Mr. Greenberg?

A. Did you read that out of my deposition?

Q. I beg your pardon?

A. Was that read out of my deposition.

Q. I am paraphrasing your answer in the deposition.

Mr. Mitchell: And I am saying he is not paraphrasing [2735] the answer in the deposition.

The Court: Might I say to the witness it doesn't make any difference where he is reading it from. He may be making it up out of whole cloth. Your

(Testimony of Fred Greenberg.)

problem is to answer the question. It doesn't make any difference where the question comes from.

Read the question again.

(Question re-read.)

The Witness: I said there may have been. I don't remember.

Q. (By Mr. Corinblit): When you answered the question that there may have been, are there any facts that you base that statement on at all that you remember? A. Not at all.

Q. You remember that there was a period of time just about at that time that your pictures were going quite regularly into the La Tijera and the Imperial day and date, do you remember that?

A. I know that there were quite a number of pictures that did play those two houses day and date. I don't remember, nor can I pinpoint a time nor the releases.

Q. Now, it was your opinion at that time that the Academy Theatre was a stronger theatre for your pictures than the La Tijera, was it not?

A. Yes, I think the Academy is the strongest theatre in [2736] Inglewood.

Q. So that your pictures were going regularly into the——

The Court: Just a minute, Mr. Corinblit. Now, will you define the meaning of the word "stronger?" Stronger in what way?

The Witness: Better grosser.

The Court: A better grosser?

The Witness: Yes.

(Testimony of Fred Greenberg.)

Q. (By Mr. Corinblit): So that you knew that at that time your pictures were going quite regularly into the La Tijera and Imperial and that the La Tijera was a weaker theatre for your pictures, less grossing theatre than the Academy?

A. Right.

Q. Don't you remember in the light of that fact that you knew there was an arrangement whereby your pictures were to go to the La Tijera and Imperial and that no one else was to bid for them?

A. There was no bidding in that area at that time, as I remember, formal bidding. We negotiated for the best houses we could get, not only in Inglewood, Hollywood, any place where we market pictures. If you can't get into the one house, you take the next best.

Q. Mr. Greenberg, the testimony in this case by Mr. [2737] Pirosh is that—

Mr. Mitchell: Wait a minute, your Honor. I don't think that is proper in view of your Honor's statement, to be repeating someone else's supposed testimony.

The Court: I don't think it is proper to question the witness upon the testimony of another witness. If the testimony of two witnesses doesn't agree, that is for the jury to resolve the problem.

Mr. Corinblit: All right.

Q. Mr. Greenberg, do you deny that someone from the La Tijera told you in 1949 that there was an arrangement with Fox West Coast and United Artists whereby the La Tijera and Impe-

(Testimony of Fred Greenberg.)

rial Theatres were to get Warner product on the 7 day availability?

A. Mr. Herbel handled Inglewood and the houses involved, Mr. Corinblit. [2738]

Q. Mr. Greenberg, Mr. Mitchell—well, I will withdraw that.

Your pictures—the kind of terms that Warners was getting for its pictures in 1950 and 1951 after the Paradise opened its doors, you would sell your pictures sometimes on a flat rental on seven days, is that right? A. Right.

Q. And you would sell your pictures sometimes on a percentage seven-day availability?

A. Yes.

Q. Now, on a flat rental that means that the exhibitor—you agree with the exhibitor that he will pay you \$500 or \$750 flat rental for the picture, is that right? A. That is right.

Q. And when you have a percentage basis, straight percentage, the distributor—the exhibitor says to you and you agree, that he will pay you 35 per cent of whatever comes into the box office.

A. That is right.

Mr. Mitchell: Or some other percentage.

Mr. Corinblit: Some other percentage.

Q. Now, if you sell your pictures on the seven-day on a flat rental that flat rental does not have anything to do directly with any overhead that the exhibitor has, does it? A. No, it does not.

Q. And if you sell your pictures on a straight percentage basis, a percentage of the gross, 35 per

(Testimony of Fred Greenberg.)

cent, for example, that percentage agreement does not have any direct relationship to any overhead.

A. Entirely based upon what is taken in at the box office.

Q. And no relation to overhead.

A. Not in that sort of percentage. We do have percentage deals where the overhead is very much an important part of the negotiations.

But where there is a straight percentage, 35 per cent of the gross, it is not involved?

A. That is right.

Q. Now, you know, don't you, that during '50 and '51—well, I will withdraw that.

Now, sometimes you have a deal whereby an exhibitor says, "I will pay you X percentage of the gross receipts up to" a figure. Let us say \$5,000.

A. Yes.

Q. "And then I will give you 66-2/3 per cent or 50 per cent over that figure."

A. Quite often.

Q. That happens on occasion, too?

A. Yes.

Q. Now, when you have—you remember, don't you, that during 1950 and '51 on the seven-day availability those were the terms upon which you generally sold your pictures—that is, either the flat straight percentage or percentage to a straight figure and such and such a figure over?

A. That is the way we sold pictures then and that is the way we sell them now.

(Testimony of Fred Greenberg.)

Q. When you sell one run on a straight percentage then, 35 per cent of the gross, whatever comes into the box office you get 35 per cent. If you sell a second run day and date with the first run, 35 per cent of the gross, you will take 35 per cent of both grosses as they come into the theatre and if you were to sell a third run on the 35 per cent basis you will take 35 per cent of whatever gross comes into the box office at the third theatre.

A. That is right.

Q. That would be the case, would it not?

A. Yes.

Q. Or if it was a flat rental basis, if you sold on a flat rental basis for \$1,000 to each theatre, you would get a flat rental of \$1,000 from each theatre.

A. That is right.

Q. Having in mind that basis, Mr. Greenberg, and the way you were selling as you have testified in 1950 and '51 as far as Warner's were concerned, if you would have sold a second run, a second print, to the Paradise or a third print [2741] to the Paradise, Warner's wouldn't be carrying any overhead of the Paradise, would it?

A. Nor did I indicate that it would, but I did bring out and again I am addressing this to the jury, because it brings up again this very one point that I am trying to get across.

I could sell 50 runs and it sounds like a very good business deal to do so, if you had that many prints to distribute, to take 35 or 40 per cent of

(Testimony of Fred Greenberg.)

the runs that came in with that sort of—those terms, taking 40 per cent of every dollar that came into 50 theatres, in this particular case again the La Tijera insisted upon bidding, negotiating for the motion pictures that would be available to this Paradise on an equal, given equal opportunity to negotiate for that picture and the Paradise refused to enter into negotiations on that basis. That is all.

Q. Now, Mr. Greenberg, I want to call your attention to this statement of yours re the La Tijera Theatre. You don't know—I will withdraw that.

First let us talk about the Academy situation. You testified before that the Academy bought the pictures on the bid with clearance over the Paradise and over the Southside and somehow you were able to get away with selling the Southside day and date. As far as the Paradise is concerned, the Paradise didn't get any of your pictures day and date with the [2742] Academy.

Now, you don't know, do you, whether or not it was the Academy's purpose in refusing to permit the Paradise to play day and date with the Academy to protect the Loyola Theatre from the competition of the Paradise?

A. I don't think that was involved. I come right back to the same thing that I just told the jury. That same thing existed. I couldn't escape it. That is the dilemma which I was in at the time and it existed until the La Tijera went out of business.

Q. Now, then, you don't know whether that was

(Testimony of Fred Greenberg.)

the purpose of the Academy in refusing to waive clearance over the Paradise—whether the purpose was to protect the Loyola?

A. It never occurred to me that that happened. I don't believe that existed at all. It may have been—I just can't see it. We had very little negotiation with any motion pictures at the Loyola. Probably a couple of pictures that played as B's, but I never negotiated with Fox or anybody else at the Loyola. It has nothing to do with us as far as I am concerned or the company. [2743]

Q. You don't know when the La Tijera Theatre said they wouldn't let you sell it to the Paradise, whether they were protecting the Loyola Theatre, either, do you?

A. No, they didn't say that I couldn't sell the Paradise as such. They just told me they wanted to bid against the Paradise. They didn't say I couldn't sell them, and I didn't say that I wouldn't have sold them if they would have met the conditions. They were reasonable and fair and just to everybody concerned.

Q. Mr. Greenberg, I placed upon the board an exhibit in evidence, Plaintiff's Exhibit 63, which shows the film rental that the Paradise paid you for the picture Tea For Two. That was about \$1500 which they paid you and which was played about three weeks after they opened.

A. Who paid that?

Q. Paradise.

(Testimony of Fred Greenberg.)

A. That was one of those three pictures?

Q. At the beginning.

A. At the beginning?

Q. Yes, opening beginning.

A. I know——

Q. This list also shows another group of pictures played in 1949 and '50. A. Yes.

Q. Comparing the film rentals you got from the [2744] Paradise for that picture, \$1500, with the film rental you were getting from the Academy Theatre—now, we haven't put on the list of what you were getting from the La Tijera——

Mr. Westbrook: Do you want to identify the pictures, counsel? It is hard to talk about film rental without talking about pictures.

The Witness: I just don't know.

Mr. Corinblit: Do you want me to read them into evidence.

The Witness: I don't remember them at this stage of the game.

Mr. Corinblit: Release 911, Lady Takes A Sailor.
Release 991, Stage Fright.

Release No. 921 is The Damned Don't Cry.
922, Colt .45 and 930, Flame And The Arrow.
Release 005, The Breaking Point.

006, Three Secrets and 007, Glass Menagerie.
These are the comparative figures.

Q. Now, you remember, don't you, that this \$1500 figure that you got from the Paradise three weeks after they opened, three or four weeks after

(Testimony of Fred Greenberg.)

they opened, was 35 to 50 per cent more than you had been receiving on the 7 day availability prior to that time, don't you?

Mr. Mitchell: I object to it on the ground it is argumentative. The rentals show that some were higher than \$1500 and some were lower. It is argumentative. [2745]

The Court: I think it is argumentative. You are arguing to the jury. The facts have been established.

Mr. Corinblit: Perhaps there is a misapprehension. I am not now talking about just these figures on the board. I am talking about rentals being received by Mr. Greenberg's company prior to this \$1,500 figure, not just these figures, but when they sold pictures to the La Tijera and other theatres. This is showing a comparison with the Academy.

Mr. Greenberg testified to this matter in the deposition, but the question is whether or not he remembers as a fact that at the time he got \$1500 from the Academy, that that price was 35 to 50 per cent more in film rental than he was regularly receiving from other accounts for the 7 day availability.

The Witness: But not from the area. He has indicated up there, I can see at this distance, that we earned \$1,581 or 61, and when you are talking about the La Tijera, you again come to that dilemma about which I have been telling you, but when you are talking about our revenue out of

(Testimony of Fred Greenberg.)

Inglewood, \$1500 under the circumstances was not an unreasonable figure. It was not one that I established. You didn't bring out the fact that we had two other pictures prior to that from your Paradise where they gave them the so-called free ride for ever so much less, much less than we could have gotten if we had otherwise marketed the picture. [2746]

Q. (By Mr. Corinblit): Mr. Greenberg, I know the kind of argument you are trying to make, and I want to direct your attention to the question—

Mr. Mitchell: I object to the statement of counsel and request the court to have him ask questions and not lecture the witness.

The Court: I suggest you don't try to argue with the witness. If you have got a question of fact, put it.

Mr. Corinblit: All right. My question is again, Mr. Greenberg, whether you remember that the \$1500 figure you got for the picture Tea For Two was from 50 per cent to 35 per cent more than what you were regularly getting for the 7 day availability in Inglewood at that time?

Mr. Mitchell: I object to that as being immaterial. Tea For Two according to Marco and others was a very high class picture, and what they got for some other picture is immaterial.

The Court: Overruled.

The Witness: Now, let's get to the question.

The Court: Do you remember the question? Read the question.

(Testimony of Fred Greenberg.)

(Question read.)

The Witness: Looking at the chart up there, I would say no.

Q. (By Mr. Corinblit): I will show you your deposition, [2747] Mr. Greenberg, and ask you to read the deposition, your question beginning at line 13 on page 33 and running over to line 4 on page 34.

A. From where to what?

Q. The question there.

A. Oh, yes, I see. I don't follow that.

Q. Just to line 4. That is as far as you need go.

A. Yes, but I want to read what Mr. Mitchell says. That is what you say.

Q. Now, does a reading of those questions and answers, Mr. Greenberg, refresh your recollection?

Mr. Mitchell: You will agree he was looking then at the La Tijera cut-off card, right?

Mr. Corinblit: La Tijera cut-off card, the La Tijera, which played most of the pictures, certainly.

The Witness: The La Tijera card was not—the La Tijera Theatre was not necessarily the best house to go into under these circumstances. On that board that you have up there, I see 1,581. What picture that was, I don't know, because you have a number there and I don't remember them. But you have some other figures that are close, 1250. I indicated, of course, that that was a lot of money for the Paradise to pay for the picture. I know that we were led to believe that the Paradise was

(Testimony of Fred Greenberg.)

going to be a big grosser and there was every reason to believe we were going to earn that kind of money. Otherwise, we shouldn't have been encouraged to move into the house and take the product away from other outlets where we knew what we could do. We were gambling on the house, giving it its first pictures, without any assurance of what our return would be. As a matter of fact, there was an adjustment made, I believe, on one of the pictures that played before that, because it didn't do as well as could be expected, and that was done because, I believe, of the warm friendship between Mr. Marco, who also operated the Southside, and Mr. Herbel. I did not enter into those negotiations. I was merely told by Mr. Herbel to establish the \$1500 fee in order to protect our company. I did that and got the money.

Mr. Corinblit: I would like to read the following questions and answers at page 33, line 12.

"Q. You note that the \$1500 for that one week of Tea For Two is 75 per cent more on the average than most of the pictures that were playing on 7 days during the preceding season?

"A. It seems that way—what did you say? 75 per cent more?

"Q. Yes.

"A. I don't think it was 75 per cent, no.

"Q. All right. Take a look at the figures on it.

"A. Well, it is—I see figures of \$500, 650, [2749] 3825, 1250.

"Q. I think you are looking at—we are talking

(Testimony of Fred Greenberg.)

about the comparison with the season just preceding that. I think Mr. Files may have the card.

“A. Well, I think that—I still say that the amount you say, 75 per cent more, is a little bit out of line.

“Q. 50 per cent more; is that right?

“A. Probably. 50 per cent more and sometimes 35 per cent more or less.”

Q. Now, the fact is, Mr. Greenberg, that even after you got \$1500 from the Paradise, in accordance with the testimony, you didn't let the Paradise have any opportunity to obtain your pictures on 7 day availability except if it bid, and for the second print you would not permit the Paradise to obtain any Warner picture on the 7 day availability, isn't that right?

Mr. Mitchell: I object to that, your Honor, as being a compound question, and also argumentative.

The Court: I think it is compound. Break the question down into separate parts.

Mr. Corinblit: All right.

Q. The fact is, Mr. Greenberg, after you got \$1500 from the Paradise, you would not permit the Paradise to obtain your [2750] pictures on the 7 day availability?

A. They—as a matter of fact, the result that we—our pictures—the performance of our pictures in the Paradise would certainly discourage me from going into the house.

Q. So that you did not permit them to get 7 day?

(Testimony of Fred Greenberg.)

A. I didn't say that, and I won't say that, and I will repeat what I have been telling you and what I have told the court, that the La Tijera insisted upon bidding or negotiating, being given equal opportunity for whatever pictures there was, and in this particular case the three pictures were taken arbitrarily away from them. They weren't given any opportunity. They were the ones who were badly treated, not the Paradise. The Paradise was given an opportunity and a chance to test it and to prove it, to see what they could do as a new house.

I think it was quite a gesture on the part of Mr. Herbel. I doubt that I would have done it.

Mr. Corinblit: No further questions.

The Witness: I am sure I wouldn't have.

Mr. Corinblit: No further questions.

Mr. Johnston: May I ask a question?

The Court: Yes.

Redirect Examination

Q. (By Mr. Johnston): Mr. Greenberg, you mentioned a Mr. Johnson in [2751] connection with the La Tijera Theatre. That is Mr. Earl Johnson, is it not?

A. Yes, it is. I want to apologize to you, Mr. Johnston. I had that bit of difficulty with you before.

Q. Anyway, it is not I?

A. Both Johnsons are fine men. I am very fond of both of them.

(Testimony of Fred Greenberg.)

Mr. Johnston: Thanks. I have no further questions.

Mr. Mitchell: Your Honor, in the examination of Mr. Lehman, when he testified he used certain memoranda which I desire to introduce in evidence while the subject is here and read to the jury.

I will try to use the plaintiff's number on these so there won't be any confusion in the record.

The Clerk: Do you have the 11 series, Mr. Corinblit?

Mr. Corinblit: Yes, I think I have them. [2752]

Redirect Examination

Mr. Mitchell: I will offer Plaintiff's Exhibits 11-H and 11-B-1 in evidence.

Mr. Corinblit: Object, your Honor, upon the ground that no foundation has been laid and upon the ground that they are immaterial and incompetent as evidence, and upon the further ground that Mr. Mitchell and Mr. Johnston objected at the time we offered Mr. Schreiber's memoranda in evidence and the court refused to permit those documents to go into evidence. [2753]

* * * * *

The Court: They have withdrawn their objection and inasmuch as they have done that they may be received in evidence.

The Clerk: Do you want them to go in as your exhibits?

Mr. Corinblit: Yes, we will put them in as our exhibits. [2756]

(Testimony of Fred Greenberg.)

Mr. Mitchell: It doesn't make any difference how they are marked.

The Clerk: 11-D-1 and 11-H.

(The documents referred to were received in evidence and marked as Plaintiff's Exhibits 11-D-1 and 11-H.) [2757]

* * * * *

Q. (By Mr. Mitchell): Now, with respect to this matter of licensing pictures in the Southside and the Paradise, do you remember in the fall of 1950, up through the middle of December, who it was that was negotiating or bidding for both the Southside and the Paradise? A. Marco Wolff.

Q. Now, on the picture Three Secrets in which the bid went to the Academy and the picture was also licensed to the——

Mr. Corinblit: Southside.

Q. (By Mr. Mitchell): ——to the Southside and it was stipulated that Three Secrets then played the 14 day availability at the Paradise, do you know who negotiated that succession of runs for the Paradise and Southside?

Mr. Corinblit: I object to that—well, go ahead.

The Witness: Well——

The Court: Just a minute. Read the question.

(Question read.)

The Court: Objection overruled.

The Witness: You mean the two runs that you are talking [2759] about, is that it, Mr. Mitchell?

Q. (By Mr. Mitchell): Well, this exhibit used by the plaintiff, which I guess was not introduced,

(Testimony of Fred Greenberg.)

shows that Three Secrets played 7 day availability at the Academy and the Southside and our stipulation was that the fourteen day availability of that picture then played the **Paradise**.

Now, do you know who negotiated with Warners for the 7 day availability with the Southside and the 14 day availability for the Paradise?

A. Mr. Wolff.

Q. And the same was true as to Rocky Mountain, isn't that correct, which played the Academy and the Southside, and we stipulated that it played 14 days at the Paradise.

A. Yes, sir.

Q. And the same is true as to Glass Menagerie which played at the Academy and the Southside, and then 14 days at the Paradise? A. Yes, sir.

Q. And the same is true as to Break Through which played at the Academy and the Southside on 7 days and then 14 days at the Paradise?

A. Those first negotiations that had to do with Marco Wolff at all—whatever pictures that were bought by Marco Wolff were bought with Mr. Herbel. I did not negotiate with him. [2760]

Mr. Corinblit: In the light of that I move to strike the answer of the witness in which he said he knows Mr. Wolff had the negotiations, because there is no knowledge. Isn't that correct, Mr. Greenberg?

The Court: Just a moment. The answer may go out.

Read the question, Mr. Reporter.

(Testimony of Fred Greenberg.)

(Question read.)

Q. (By Mr. Mitchell): When I say "The same is true," I am asking you if Marco Wolff negotiated for those two pictures.

A. That is what I testified to a while ago, that all negotiations with Mr. Wolff were carried on with Mr. Herbel.

Q. And was it Mr. Wolff that negotiated for these two theatres during that period of time?

A. For the Southside and the——

Q. And the Paradise?

A. Paradise. I would have to look that up, Mr. Mitchell. I just don't remember who negotiated on what particular picture. I would have to look that up.

I know that the first negotiations—I can't pinpoint the pictures—all of the first negotiations involving those two houses were carried on by Mr. Marco Wolff and by Mr. Herbel. [2761]

Q. All right. A. They negotiated.

Q. Now, you were asked about various types of deals, a flat deal, a straight percentage, and then a percentage involving—— A. A split figure.

Q. A split figure. Just tell the jury, if you will, please, when you negotiate a percentage involving a split figure, how the number of overhead affects your ultimate revenue.

A. A percentage deal with a split figure——

Q. You better tell them what that is.

A. Well, we will say a deal is sold at 35 per cent of a certain figure, and that is to \$5,000. The

(Testimony of Fred Greenberg.)

\$5,000 is arrived at through experience with the house or through experience with previous pictures that have played. We know pretty much what the house will gross. And through their expenses, overhead of the house. If the house is a good grossing house, and we can participate in a split figure, obviously we would get a lot more money. We get 35 per cent up to \$5,000, and very often it is either 50 per cent over that, and more than that, or $66\frac{2}{3}$, whatever it is we are able to negotiate, and, of course, if the gross does hit over \$5,000, the returns to us are much, much greater. That is obvious to you.

Q. What happens if you divide that gross among several [2762] theatres by playing them day and date?

A. Of course, you don't have near the chance of hitting the split figure, so you stay within the 35 per cent confines.

Q. That is the way your multiple overheads decrease the distributors' revenue?

A. That's right.

Q. Do you ever sell on a sliding scale?

A. We have sold on a sliding scale with a certain peg basis, that is a floor to it.

Q. Does the overhead, the number of overhead affect your profits on a sliding scale?

A. Very much so, because a sliding scale based on overhead plus revenue—

Q. Perhaps you had better explain the sliding scale to the jury.

(Testimony of Fred Greenberg.)

A. A sliding scale is a figure established by determining what it costs to operate a house, and then you base your grosses upon various stages. You move up to either 1 per cent or 2½ per cent as the gross goes up, and then, of course, for instance if a picture on percentage, that is sliding scale, was to hit 35 per cent, you go back to the original amount, and you participate in all of it, and if it hits 20 per cent, of course you get—I am not making myself very clear. [2763]

A sliding scale is merely a graduated scale based upon what the gross is, and as the gross goes up we participate to a greater amount and to a greater percentage.

Q. So that if you can keep all the gross in one house, you get more than if you split the gross among several? A. Obviously.

Q. You spoke about the La Tijera going out of business. When did the La Tijera go out of business, about?

A. Oh, I don't know. About 1953, I think. I just don't know exactly when. I think it was in 1953 some time. Maybe 1952. 1953, I think.

Mr. Mitchell: Now, with respect to this matter of Mr. Greenberg's deposition concerning bidding or negotiating in the early part of 1950, there were additional portions of his deposition which follow that which was read by Mr. Corinblit, which I would like to read. I can either read it now or tomorrow morning.

(Testimony of Fred Greenberg.)

The Court: Read it now while it is fresh in the mind of the jury.

Mr. Mitchell: All right. This follows the matter at page 16. I believe the start is in the neighborhood of line 14 that was made by Mr. Corinblit. I am reading from page 17 after the comment of counsel.

“Q. (By Mr. Corinblit): Is there anything else other than this notation, Mr. Greenberg, on which you rely [2764] in which you say the pictures went to the La Tijera Theatre as a result of bidding? Do you rely on your own recollection to that effect, too?”

He has reference to the paper, the cut-off card, with the words “bidding situation” on it.

The Witness: I referred to the records.

The Court: Are you reading a deposition now or questioning the witness?

Mr. Mitchell: I am reading the deposition, and trying to explain.

The Court: Then you are not in this.

The Witness: I am sorry.

Mr. Mitchell: You are not in the act.

The Witness: I don't know how to deport myself.

Mr. Mitchell: “A. No, not on my own recollection. That is a few years back.

“Q. Now, you say that if you look at the documents, the contracts and any requests for offers that might have been sent out during that time,

(Testimony of Fred Greenberg.)

you would be able to tell us whether or not that was the result of bidding, is that right?

“A. Yes. But inasmuch as it indicates it was a bidding situation I assume, naturally, it was bidding for the various releases and undoubtedly the best bid [2765] got the picture because we make all pictures available to everybody in a competitive area, giving them an equal opportunity to negotiate for whatever picture we make available.

“Q. Was the bidding that went on during that season the kind of bidding that you asked the Paradise to enter into when it asked for 7 day pictures?

“A. Well, what kind of bidding is there but bidding? Would you differentiate? I don't know just what sort of an answer you want on that. Bidding is just bidding, whether we do it formally or whether we negotiate. In other words, bidding is merely a matter of another way of marketing.

“Q. Then your answer is when the Paradise was required to bid it was required to bid in the same way as the bidding was going on prior to that time; is that right? “A. Prior to that time?

“Q. Prior to the time that they asked you for 7 day pictures and you required the Paradise to bid.

“A. We required? We didn't require the Paradise to bid as such, we didn't make the demands that the Paradise bid. The original request came from the Paradise's own competition. [2766]

“Q. Well, was the bidding, Mr. Greenberg, that

(Testimony of Fred Greenberg.)

Warners set up as a result of what you have testified to—— “A. Yes.

“Q. ——after the Paradise opened, the same kind of bidding that was going on prior to the time the Paradise opened?

“A. Well, I am just trying to remember when we went into what is called formal bidding, because we didn't enter into formal bidding for—well, anywhere, for that matter, on a formal basis—I think Warners were probably one of the last companies to go into bidding on a formal basis anywhere in the United States, and prior to that time we were negotiating on a bidding or competitive basis.

“Q. When you say prior to that time, what time are you referring to?

“A. I don't know. I would have to look that up, when we started out bidding formally. I don't know just what the date is on that.

“Q. Does the notation on the cut-off card identified as 1-A help you to determine that?

“A. 1-A? You mean this (indicating)? Oh, that means nothing to me.

“Q. No, I mean that notation in the lower [2767] left-hand corner.

“A. Oh, ‘bidding situation?’

“Q. Yes.

“A. Well, it indicates they were bidding, but just when we started formal bidding I would have to check and find out, when our company went into formal bidding as such.”

Mr. Corinblit: Would you go on, please?

(Testimony of Fred Greenberg.)

Mr. Mitchell: More?

Mr. Corinblit: Yes.

Mr. Mitchell: "Q. Do you know what the term 'sham bidding' means, Mr. Greenberg?"

"A. 'Sham?'"

"Q. Yes.

"A. Never encountered it."

That's all on the matter of bidding. [2768]

* * * * *

Mr. Mitchell: Your Honor, I wish to offer in evidence the comparison of film rental between the pictures *Enforcer*, *Goodby My Fancy* and *Glass Menagerie*, which were developed yesterday during the examination of Mr. Greenberg.

The Court: It may be admitted in evidence.

The Clerk: Warner's J.

(The exhibit referred to was received in evidence and marked as Defendant Warner's Exhibit J.)

Mr. Mitchell: I have no further questions of Mr. Greenberg. [2772]

FRED GREENBERG

the witness on the stand at the time of adjournment, having been heretofore duly sworn, was examined and testified further as follows:

Recross Examination

Q. (By Mr. Corinblit): Mr. Greenberg, yesterday Mr. Mitchell read to you a memorandum, two memoranda, by Mr. Lehman of conversations he had with you in about May 1951. You recall it went something like this:

(Testimony of Fred Greenberg.)

Talked with Fred Greenberg at 10:13 a.m. He informs me we must bid against the La Tijera to secure 7 and 14 day pictures. He says the La Tijera will not permit us to play pictures at either of these clearances without bidding for same and his hands are tied inasmuch as he must cater to their request to permit bidding.

When I asked what happens when the La Tijera loses the bid over the Academy and Fifth Avenue Theatres, and why we cannot negotiate for day and date play with those theatres, he—referring to you—talked in circles and refused to give me anything definite except that we must bid for the product.

Now, it is that phrase in there, when you talked to him you talked in circles, in answer to that question, that I want to develop a little further. [2773]

On the play-off that we have that we will offer in evidence, that is the list of pictures for which bid responses were received, and the Academy, for example, won the first five or six pictures, the La Tijera put in bid responses, you rejected the bid responses of the La Tijera and gave it to the Academy, and then you proceeded to give it to the Southside Theatre by negotiation—

Mr. Mitchell: I object to this as not a question. It is an argument, your Honor. He insists on using the word give. If they offer the most money, he doesn't give it.

Mr. Corinblit: There is no testimony here—

Mr. Mitchell: It is a long argument about matters that occurred—it is not proper cross examina-

(Testimony of Fred Greenberg.)

tion because it doesn't involve the May period at all, 1951. He is talking about back in 1950 when Marco was running the theatre, not when Lehman was running it.

The Court: Read the question.

Mr. Corinblit: Let me rephrase the question.

The Court: All right. Rephrase the question.

Q. (By Mr. Corinblit): Mr. Greenberg, if you could answer this specific question, did you ever tell Mr. Kupper that you felt that since you were violating your contract—let me withdraw that first.

Did you have a contract with the La Tijera for any of these pictures? [2774]

A. I don't remember whether we did or not. I would have to refer again to whatever records there are.

Q. What records do you want to see?

A. Whether or not we had a—our contract from them. I want to see if we had a contract.

Q. With the La Tijera Theatre?

A. With any theatre.

Q. All right.

A. I certainly can't remember any certain specific contract. As you know, I deal with over 400 theatres on a great number of motion pictures, and for you to expect me to answer that question specifically back in 1949 or 1950, or even yesterday, probably is really asking me to tax my memory a bit too much.

Mr. Corinblit: May I have the Warner's contracts that you used with Mr. Greenberg?

(Testimony of Fred Greenberg.)

Mr. Westbrook: Counsel, they are in the exhibit file.

Mr. Mitchell: I did not use any Warner contract. They are bid applications.

Mr. Corinblit: Mr. Mitchell, you put them all in evidence yesterday.

Mr. Mitchell: Then if they are in evidence, they are available to you.

Mr. Westbrook: And there is another file of film [2775] licensing agreements, as you know, that have been here all through the trial.

Mr. Corinblit: You say you have a file of film licensing contracts, is that right, Mr. Bakaly?

Mr. Bakaly: They are in there, yes.

Mr. Corinblit: Will you point them out to me, please?

Q. In addition to the material that you have before you, here is the only file that I find, that your counsel have produced, that refers to the La Tijera Theatre.

A. What pictures did you want to know about, Mr. Corinblit?

Q. What I want to know, Mr. Greenberg, is whether you had a contract with the La Tijera on 006, 008, 007, 010, 019, or 012, or 014.

The Court: You mean a contract as a result of a bid or negotiation?

Mr. Corinblit: Yes, sir, any kind of a contract.

The Court: Any kind of a contract?

Mr. Corinblit: Yes, sir.

The Court: You mean a contract before they got

(Testimony of Fred Greenberg.)

the pictures, I mean months before they got the pictures, or immediately before they got the pictures?

Mr. Corinblit: Your Honor, any contract at all with the La Tijera pertaining to those pictures.

The Court: Any kind of a contract.

Mr. Corinblit: For the 7 day availability.

Mr. Mitchell: Isn't there the evidence that those pictures played at the Academy and Southside?

Mr. Corinblit: Yes, sir.

Mr. Mitchell: What's the use of asking him about the La Tijera. If they didn't play them, they aren't going to have a contract. It is already stipulated what it was.

Mr. Corinblit: Then you will stipulate with me Warners did not have a contract with the La Tijera for those pictures, is that right?

Mr. Mitchell: On any picture that played only in the Academy and the Southside, of course, Warners did not have a contract with the La Tijera or the Fifth Avenue, or any other theatre.

Mr. Corinblit: I will accept that stipulation.

The Court: If you want to stipulate, stipulate as to the pictures. You say all of them. All, of course, includes these pictures, but let's stipulate to what they were.

Mr. Mitchell: Let's get the names of the pictures. I don't carry numbers in my mind. What pictures are you talking about?

Mr. Corinblit: Three Secrets, which you have

(Testimony of Fred Greenberg.)

marked as playing the Academy and Southside, Three Secrets.

Mr. Mitchell: That is back in 1950. [2777]

Mr. Corinblit: Yes.

Mr. Mitchell: All right.

Mr. Corinblit: Rocky Mountain.

Mr. Mitchell: That is back in 1950. That's right.

That played the Academy and Southside.

Mr. Corinblit: No contract with the La Tijera.

Mr. Mitchell: Of course, no. You don't have a contract with a theatre that isn't going to play it.

Mr. Corinblit: Glass Menagerie.

Mr. Mitchell: That played in the Academy and Southside. No contract with the La Tijera.

Mr. Corinblit: Breakthrough.

Mr. Mitchell: Still in 1950. Correct.

Mr. Corinblit: West Point Story.

Mr. Mitchell: That's right.

Mr. Corinblit: Highway 301.

Mr. Mitchell: Still 1950. That is correct.

Mr. Corinblit: Storm Warning.

Mr. Mitchell: That is January 1951. That's right.

Mr. Corinblit: All right. That's it.

Q. Now, Mr. Greenberg, it is therefore stipulated there was no contract with the La Tijera for any of those pictures.

Now, did you have a conversation, Mr. Greenberg, with Mr. Kupper or Mr. Johnson of the La Tijera in which you told them that since they didn't have a contract for that picture, [2778] you were

(Testimony of Fred Greenberg.)

going to sell the Paradise Theatre day and date with the Academy, because that is what Warners had a right to do if they wanted to? Did you tell him that? I am just asking about that specific conversation.

A. I don't remember. I don't think that I did.

Q. Now, did you have a conversation with Mr. Kupper in which you told him that—withdraw that.

When Mr. Kupper said to you, as you indicated here, that he insisted on bidding against the La Tijera, he said to you that he insisted on bidding for an exclusive run, didn't he? A. No, sir.

Mr. Mitchell: Mr. Kupper did not say that.

The Witness: He did not use the word exclusive.

Q. (By Mr. Corinblit): He did not use the word exclusive? A. No, sir.

Q. Did he say that he was willing to compete for a day and date run with the Paradise?

A. I thought I made it abundantly clear yesterday that at all times he wanted to have equal opportunity, which was also the method and the offer I had made to the operators of the Paradise, equal opportunity to bid for this picture.

It is strange to me, Mr. Corinblit, that I deal with Mr. Lehman, he buys for about 40 theatres, and many of them are bidding, and some of them have just been concluded. I just [2779] talked to Mr. Lehman this morning, as a matter of fact. I want to develop that with you so you will understand our position in that. He has won these pictures. He is very happy about it. The fellow that

(Testimony of Fred Greenberg.)

loses, naturally, because it is a Warner picture is very unhappy about it. That is exactly the position that I state we had then and we have today.

If an exhibitor insists on bidding against what he considers to be his competition and is willing to put up his money, more of it than the other fellow, I most certainly think that he is entitled to that consideration and shouldn't be—I shouldn't place him in a secondary position just in order to satisfy Mr. Paradise.

Mr. Corinblit: Your Honor, I will move to strike that answer of Mr. Greenberg's as being non-responsive.

The Court: It may go out.

Mr. Corinblit: Thank you.

Q. Mr. Greenberg, I will ask you if you will answer my question, please. A. I will try.

Q. When Mr. Kupper or Mr. Johnson—did you have a conversation with Mr. Kupper and Mr. Johnson in which they made some statement to you that they insisted on bidding against the Paradise?

A. Yes.

Q. When did that conversation take place?

A. Many times. Do you mean what date?

Q. Do you remember the date at all?

A. No, no.

Q. Do you remember who was present at the conversation? A. No.

Q. Do you remember what was said?

A. No.

Q. You don't remember what was said?

(Testimony of Fred Greenberg.)

A. No.

Mr. Mitchell: You mean precisely what was said?

The Witness: He asked me if I remembered what was said.

Q. (By Mr. Corinblit): Do you remember what was said in substance or effect?

A. What I have already indicated, that they wanted to bid or negotiate for our product in opposition to the Paradise Theatre.

Q. All right. Now, did Mr. Kupper and Mr. Johnson say this to you on one occasion or a number of occasions?

A. I wouldn't know how to number the occasions.

Q. All right. Now, did you tell Mr. Johnson or Mr. Kupper on any of those occasions that Warners didn't want to put up a print in that area for an exclusive run?

A. I don't remember that. [2781]

Q. Did you tell Mr. Kupper or Mr. Johnson on any of those occasions that La Tijera didn't have a contract for any of those pictures and that you felt if you wanted to sell the Paradise, you would do it?

A. I don't remember that.

Q. Did you tell Mr. Kupper or Mr. Johnson that you were not setting up exclusive runs as between the Academy and the Southside and, therefore, you would not set up an exclusive run between the Paradise and La Tijera?

A. I don't remember the conversation.

(Testimony of Fred Greenberg.)

Q. Now, in the second letter that Mr. Mitchell read to you yesterday, the second memorandum Mr. Mitchell read to you yesterday——

Mr. Mitchell: I did not read it to the witness. I read that into evidence so that the jury could hear it. I did not read it to him or ask him any questions about it.

Q. (By Mr. Corinblit): In that letter Mr. Mitchell read yesterday, part of it says, "he informed me as far as Lullabye of Broadway is concerned, he was willing to permit us to play the picture day and date with the La Tijera, but that Earl Johnson refused to permit it."

Is that fact correct, Mr. Greenberg, that you were willing, as far as Warners was concerned, it was all right for the Paradise to play day and date with the La Tijera? You can answer that yes or no. [2782]

A. Well, I could say that as far as I was concerned, yes.

Q. Now, were the Paradise and the La Tijera in your opinion in substantial competition in 1950 and 1951?

A. I was led to believe that they were, and I think that they are.

Q. They are in——

A. They were, rather, because the La Tijera, of course, no longer exists today.

Q. They were in substantial competition.

The Court: May I interrupt a moment? Which two theatres is this?

(Testimony of Fred Greenberg.)

Mr. Corinblit: The Paradise and the La Tijera Theatres, your Honor.

The Court: Did you testify yesterday that they were or were not in substantial competition?

The Witness: Were.

The Court: Yesterday?

The Witness: I am quite sure I said they were in substantial competition.

Mr. Corinblit: Your Honor, I don't think the question was asked yesterday, in all fairness.

The Court: It was not asked yesterday?

Mr. Corinblit: No.

The Witness: Your Honor, if I were asked the question [2783] yesterday, I would answer as I did today, that I consider them to be in substantial competition.

The Court: Yesterday you said on numerous occasions you didn't know, and I was wondering if this was one of the occasions you said you didn't know, and you found out overnight.

The Witness: No.

The Court: So it was not asked yesterday.

Mr. Corinblit: No, sir.

The Court: All right.

Q. (By Mr. Corinblit): Mr. Greenberg, this is true, then, it is true not only with respect to the picture *Lullabye of Broadway*, but true during the period 1950 and 1951 as far as Warners was concerned, it was agreeable for the Paradise and the La Tijera to *play and date*?

A. Under the circumstances that I told you

(Testimony of Fred Greenberg.)

about, as far as I was personally concerned, I would have served day and date, although I wouldn't have considered it to be good business, I would approve something that way, that they couldn't cut up that dollar and either one make a profit, because they would cut into each other, so that neither one would be successful in their operation.

Q. That is to say, you didn't want to permit it for the benefit of the Paradise, is that it?

A. I don't follow that. You mean that I was leagueing or trying to do something against the Paradise? I welcomed [2784] the Paradise into that competitive area, as any other salesman would who has an increase in his possibilities. I certainly could do better with four or five or six or a dozen theatres in a competitive area than if just one existed. It would be a buyer's market then. But having more theatres, we had a seller's market. I am a salesman and I enjoy that position.

Q. Mr. Greenberg, Mr. Mitchell asked you yesterday some questions pertaining to the advisability from a distributor's point of view of selling theatres, a group of theatres, on a formula providing for a percentage to a split figure, and then a percentage over that figure. I think you testified under his examination that if you have a split figure with an increased percentage over that split figure, it is harder for you to get to that overage if you have more theatres playing, is that right?

A. Yes, that's right. I didn't tell him it was de-

(Testimony of Fred Greenberg.)

sirable in our case. In our selling I did not tell him it was desirable, as far as I was concerned, in my selling.

Q. Desirable or undesirable?

A. That's right.

Q. You don't have any opinion on that one way or another? A. I have an opinion.

Q. You have an opinion? [2785] A. Yes.

Q. And your opinion in 1950 and 1951 was what?

A. My opinion at any time is substantially the same, that too often split figures are arbitrarily fixed so that it is most difficult to hit them under any circumstances. I rarely sell with split figures and I try to get away from what was termed a sliding scale, because a sliding scale is developed by the exhibitor himself, and under the circumstances you naturally would suppose him to take advantage of everything that is possible for him under those circumstances. You accept a sliding scale which is something that he himself has developed.

Q. So you don't like sliding scale?

A. Not too well.

Q. And you don't like percentage to a split figure with a top figure?

A. I like it if the split figure is reasonable. I am talking about this business from a practical point of view as we meet it from day to day.

Mr. Corinblit: All right. May I have the Warner cut-off cards, please?

Q. I will show you Plaintiff's Exhibit 72-C and

(Testimony of Fred Greenberg.)

ask you to run down the United Artists cut-off card for the 7 day availability in 1950 and 1951.

A. Yes. [2786]

Q. At that time, as far as the 7 day availability was concerned on that cut-off card, there are nine entries for pictures. Of those, how many do you find on a sliding scale?

A. I see one. That's all I see.

Q. Do you find any on a split figure basis?

A. No. I see them with guarantee.

Q. Guarantee and straight percentage and flat?

A. That's right.

Q. No split figures?

A. I don't see any split figures on this one.

Q. On the La Tijera, I count 14 entries. Will you tell me if you find any sliding scales?

A. I see one, that's all.

Q. Do you find any split figures?

A. No, I don't. That bears out what I told you.

Q. On the Imperial Theatre, I count 18 entries.

Do you find any sliding scales? A. No, I don't.

Q. Do you find any split figures? A. None.

Q. On the Paradise, I see—well, this is not on a 7 day run. A. What is that on?

Q. It is called third run. Perhaps we better handle [2787] this matter, even though it is not on the 7 day. I see 11 entries.

Mr. Mitchell: What run is this?

The Witness: Well, it is—

Q. (By Mr. Corinblit): What is it called?

A. Third run there, but then on this one here,

(Testimony of Fred Greenberg.)

while it said third run, which was established——

Q. Tea For Two.

A. Some of these pictures are not third run.

Q. Yes.

A. Some of these pictures are first run in the area. [2788]

Mr. Corinblit: Yes, I don't have any quarrel with that. As a matter of fact, I didn't think we ought to handle the Paradise because it doesn't refer only to 7 days pictures, but it might be important to state—just to get the record clear that there are no sliding scales or split figures on the Paradise card.

Mr. Mitchell: I object to it as being immaterial on these later runs. That isn't the way they sell pictures on the later runs. It is not material to the 7 day problem at all.

The Court: Objection overruled.

Q. (By Mr. Corinblit): Are there any, sir, any split figures? A. No, not on that page.

Q. And no sliding scales on that page?

A. No, sir.

Q. Now, we turn to the Fox Academy or Fifth Avenue. I count 14 entries. Will you tell me how many sliding scales? A. I see one.

Mr. Mitchell: The records are in evidence, your Honor. Can't—this is just a matter of arguing from the record.

The Court: Objection overruled.

The Witness: I see one re-issue combination on sliding scale. I see one that had a split figure—two

(Testimony of Fred Greenberg.)

—let me [2789] see, three that have a split figure. I believe that is all.

Q. (By Mr. Corinblit): And the rest are either straight percentage or flat? A. That is right.

Q. On the Rio Theatre where the cut-off card indicates—first, there are nothing but flat figures, is that right?

A. That is right. Just flat figures. No, wait a minute—that is wrong. Here is a percentage.

Q. Pardon me. One percentage, but no sliding scale and no split figures?

A. That is right. I don't like them.

Q. And finally the Southside card? A. Yes.

Q. I count 19 entries. Are there any sliding scales? A. No, no sliding scales.

Q. And no split figures?

A. No split figures.

Mr. Corinblit: No further questions.

Mr. Mitchell: May Mr. Greenberg be excused, your Honor?

The Court: May this witness be excused?

Mr. Corinblit: He may be excused.

The Witness: Thank you, sir.

Mr. Mitchell: I will call Mr. Blake. [2790]

FOSTER M. BLAKE

called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

The Clerk: State your full name.

The Witness: Foster M. Blake.

Direct Examination

Q. (By Mr. Mitchell): Mr. Blake, what is your occupation?

A. I am Western Division Sales Manager for Universal Pictures.

Q. How long have you occupied that position?

A. Since January, 1950.

Q. And what was your position before that?

A. I was district manager for Universal with headquarters here in Los Angeles and included under my supervision was the Los Angeles territory.

Q. Let us start back with your association with Universal. When was your first association with Universal?

A. 1938 as a salesman in the Portland, Oregon territory.

Q. All right. Where did you go from there?

A. In 1939 I became salesman in the Los Angeles territory. In 1941 I became branch manager of our Seattle office and in 1947 returned to Los Angeles as branch manager here.

And in 1946 I became district manager. [2791]

Q. And then you have been district manager since 1946? A. Division manager since 1950.

(Testimony of Foster M. Blake.)

Q. What does the district manager encompass?

A. Well, in my case my district comprised the Los Angeles, Salt Lake, Denver, Kansas City, Omaha and Des Moines branches as division manager. I now have supervision over 13 branches from Chicago and Indianapolis west.

Q. During this period did you for some time reside in Los Angeles? A. Yes, sir.

Q. And during what part of this period?

A. 1939 to early 1941 and again from early 1943 to the end of 1949.

Q. Now, you are familiar with the manner in which Universal licensed its first run pictures from 1946 forward, Mr. Blake?

A. I believe I am, yes, sir.

Q. In Los Angeles, I mean? A. Yes, sir.

Q. The record shows that you started licensing your pictures in 1946 first run Los Angeles to a group of Fox West Coast theatres.

What was the occasion of adopting that method of licensing your pictures?

Mr. Corinblit: I object to that unless a foundation is [2792] laid with respect to this witness' knowledge or conversations having to do with the determination of policy as to that matter.

My information is that such a foundation—I request such a foundation be laid in the light of this witness'——

The Court: All right, lay a foundation.

Q. (By Mr. Mitchell): Well, you were branch manager in 1946?

(Testimony of Foster M. Blake.)

A. I became, yes, early part of 1946 I was branch manager and on September 1st of that year I became district manager.

Q. And were you present at a discussion between Mr. Zabel and Fox West Coast people with respect to the arrangement for a group of theatres to play Universal pictures first run Los Angeles?

A. I was present at some of those discussions. I am not certain that I attended all of them.

Q. And did you participate in discussions with your own Universal management people about this?

A. Yes, I did.

Q. All right. Now, tell us what the occasion was of Universal making an arrangement with Fox West Coast for the licensing of pictures first run Los Angeles?

Mr. Corinblit: The same objection. No foundation has been laid. The foundation only says that he participated [2793] in discussions.

Now, the foundation with respect to his knowledge as to what the conversation was is a long way from participation and discussion.

The Court: Haven't we already got evidence in the record as to what happened here?

Mr. Mitchell: Certainly. I don't know what Mr. Corinblit is objecting to.

The Court: This is cumulative only.

Mr. Corinblit: Yes.

The Court: Objection overruled.

The Witness: May I hear the question again, please.

(Testimony of Foster M. Blake.)

The Court: Read the question, Mr. Reporter.

(Question read as follows: "Q. All right. Now, tell us what the occasion was of Universal making an arrangement with Fox West Coast for the licensing of pictures first run Los Angeles.")

The Witness: The occasion was the fact that the theatre business was quite good in this area by 1946 and had been for several years previous. As a result pictures were playing much longer—extended runs were the rule rather than the exception, and as a result we were having a great deal of trouble finding playing time.

We were having trouble in finding theatres in which to play first run Los Angeles on the 50 to 55 pictures that we [2794] released every year at that time.

We had as far back as my knowledge goes, been playing first run Los Angeles in the RKO theatres, the Pantages on Hollywood Boulevard and Hill Street Downtown.

Ours were not the only pictures played by RKO theatres. I believe they generally played two other products.

As a result of these lengthened runs, we met with increasing difficulty of getting playing time in the RKO theatres, so for the year or possibly two years prior to the fall of 1946 we were literally and figuratively in the street with our pictures. We had a very difficult time finding a regular consistent outlet first run.

(Testimony of Foster M. Blake.)

We did find places to play our pictures at that time and what we considered acceptable for the better available first run theatres.

We might be playing our pictures in such a manner that we found ourselves competing with our own products, not only on first run, but in the subsequent run availabilities.

So, we decided we would like to try to find a reliable and definite outlet for our pictures in the way of a group of theatres that would replace capacities—the Hill Street and Pantages Theatres—we did what—pardon me. After surveying the situation, and after all we lived with it day in and day out—we knew which theatres seemed to be pretty well tied up with certain pictures, certain products, but we [2795] did the obvious thing. We went to the theatre operators who had the most of what we wanted, and that happened to be Fox.

We asked them to try to make available to us a group of theatres that would permit us to offset or equal the approximately 6000 seats that we had in—that we had had in the Hill Street and Pantages.

That was the occasion.

Q. (By Mr. Mitchell): At that time, what was the quality of your pictures compared with, let us say, Loew's, Warners, Paramount, Fox?

Mr. Corinblit: I object to that question unless a foundation is laid with respect to this witness' knowledge of the quality of the pictures of other companies.

(Testimony of Foster M. Blake.)

The Court: Do you think that is a fair question to ask this witness?

Mr. Mitchell: I know it is an embarrassing question, but I think he should answer it.

The Court: MGM have already testified that they had the best pictures in the world.

Mr. Mitchell: But I think it is a factor that confronted Universal and I must ask him to answer the question however embarrassing.

The Court: Well, let us get a definition of the meaning of the word "quality." [2796]

Q. (By Mr. Mitchell): Well, box office-wise in comparison to these other companies.

Mr. Corinblit: Your Honor, I know your Honor wants to rule on the objection, but the point I made as to this witness' knowledge of the box office quality of Metro, Warner, Paramount is not his own—

The Court: Don't you think a man in the motion picture industry engaged in the distribution of pictures watches his competitors as well as his own pictures?

Mr. Corinblit: Yes, but if we could just have this witness state that he knows the box office quality of the other theatres, then on cross examination I wouldn't have that problem. I object to it on the ground that no foundation has been laid.

The Court: Overruled. Answer the question if you can.

The Witness: It is an embarrassing question, your Honor, since I am under oath.

You have to be realistic. You may not go around

(Testimony of Foster M. Blake.)

publicly admitting that your pictures are not as great as your competitors, but I think we in the sales department are fairly honest with ourselves in the appraisal of our product and we know our competitors' position.

To answer specifically how we felt about our pictures, we were making a great volume of product. We were not as you may say, leading the parade by any means with respect to [2797] quality.

We had an occasional picture where we could sit back and enjoy what we would call a "seller's market," but generally we were at a disadvantage.

Q. (By Mr. Mitchell): All right. Now, with this problem of the type of pictures you were distributing and your inability to get them properly exhibited and exploited, what did you do then?

A. At what time?

Q. In 1946.

A. I am sorry. I don't understand the question.

Q. Well, did you have a conversation with a theatre owner in an attempt to get him to play your product? A. Prior to 1946?

Q. No, in 1946. I am referring particularly to Mr. Zabel.

Mr. Corinblit: Your Honor, these are leading questions. I know leading questions have been asked before, but this is now putting the name of the witness—the name of the person in the conversation right into the witness' mouth.

The Court: Objection overruled.

(Testimony of Foster M. Blake.)

The Witness: These discussions concerning the formation of what we came to refer to as the "Universal unit," naturally included Mr. Zabel.

Mr. Zabel was the head of the buying department of Fox [2798] West Coast Theatres or National Theatres generally at that time, so it was perfectly logical he was one of the people that we talked to.

Q. (By Mr. Mitchell): Now, can you remember a conversation in which some request was made by Universal for theatres? A. Yes, I can.

Q. And where was the conversation?

A. I am quite certain it was in Mr. Zabel's office.

Q. And do you remember who else were present?

A. Mr. Scully, who was then our general sales manager and I believe Mr. O'Keefe, who was then assistant general sales manager of Universal.

And I believe also that Mr. Feldman, who was then district manager, was present.

Q. And who else besides Mr. Zabel for Fox West Coast, if you remember?

A. I don't recollect exactly, but I can assure you that there were others of the Fox organization there because they always came in bunches.

Q. All right. On your side, can you remember what was said and by whom in substance?

A. I can't remember anything exact. We discussed the relative values of the different theatres that had been proposed as a part of this unit. [2799]

Q. Well, did anybody—how did it start?

A. The inception was, as I understand it—I

(Testimony of Foster M. Blake.)

don't know that I was in that original conversation—

Mr. Corinblit: Then, your Honor, I will ask the witness not to testify to anything he doesn't know of his own knowledge.

Q. (By Mr. Mitchell): In the conversations that you remember?

A. The conversations I am speaking of, Mr. Mitchell, are those we had among ourselves, among the Universal people when we were discussing the request that we went to Fox with, asking them to furnish us a group of theatres.

They had more to offer than any one person. We hoped, as I said before, of putting together approximately six thousand seats.

Q. Now, this discussion that you remember in Mr. Zabel's office, what was the substance of that discussion?

A. That was as I believe I said before, merely discussing the relative values of the different theatres, such as the Ritz on Hollywood Boulevard, or the United Artists downtown, or some of the Fox theatres on Hollywood Boulevard.

Q. All right. And did you finally arrive at a group of theatres which they would make available to you?

A. We did. We weren't entirely satisfied, but we got what we felt was certainly some of the better available [2800] theatres in the area and we did achieve our aim of assembling approximately six thousand seats. [2801]

(Testimony of Foster M. Blake.)

Q. And what were those theatres that you started with? A. The United Artist.

Q. Downtown Los Angeles?

A. Downtown Los Angeles. The Ritz on Hollywood Boulevard, the Iris and the Guild on Hollywood Boulevard and the Studio City on Ventura Boulevard.

Q. And those made up approximately the number of seats you were looking for? A. Yes, sir.

Q. How did you happen to select the Studio?

A. Well, that goes back to the Hollywood Boulevard situation. It wasn't entirely a choice that we took two theatres on Hollywood Boulevard, but in order to make up the seats that we felt were required to offset a large theatre like the Pantages, which we felt was just about the finest Hollywood outlet obtainable, we had to take two theatres on Hollywood Boulevard.

Then there was the thought that I believe emanated, I am quite certain, from some of our people in the publicity department of the studio that they would like to have a first-run theatre in their backyard.

There is a place out there called Universal City. It is a separate post office. It is something that Universal is rather—I shouldn't say "proud of," but at least it has been jealously guarded for many years. [2802]

Q. And that is on Lankershim Boulevard?

A. Yes, sir. And we felt certainly as we were not overseated on Hollywood Boulevard it wouldn't

(Testimony of Foster M. Blake.)

harm us too much to have a theatre that people in our studio, most of whom I understood at the time lived in the Valley and North Hollywood, would have a theatre in their own backyard, as it were, playing Universal product first run.

Q. All right. Now, what was your arrangement with Fox West Coast with respect to these theatres and in respect of how you would get your pictures in there and at what price and so on?

Mr. Corinblit: Your Honor, I object to this as calling for a conclusion of the witness. Can't we have testimony as to conversations and as to what was said or any written contracts arrived at?

The Court: Objection overruled.

The Witness: We were given—in fact, it was part of our original request, prior rights to this unit—by that I mean we actually booked and within reason we determined the length of the runs of our pictures. We couldn't be unreasonable and insist that a picture play so long that it forced the theatre into a loss just to get us a few days' additional playing time for an additional few dollars in film rental, but with rare exceptions only Universal pictures played in this unit, unless there could have been a time [2803] where we didn't have a picture available to play in the unit.

But we really exercised the booking control of this unit of theatres.

Q. (By Mr. Mitchell): How did you determine the price that would be paid for each of these pictures that you put in?

(Testimony of Foster M. Blake.)

A. It was a matter of constant and continuing discussion with the Fox buying department, although after the fact it is evident that we played our pictures in the majority of instances on a sliding scale basis.

Q. In your arrangement with Fox West Coast was there any length of time in which you were to continue this practice?

A. There was no commitment on our part to deliver pictures for any specific time. We could have stopped any time we wanted to. The arrangement had to be mutual, of course, and for a number of years we felt it was the most satisfactory way of playing our pictures first run Los Angeles.

Q. All right. Now, during the time that you used this unit of theatres as your first-run outlet, were there some changes made in the theatres that Fox West Coast made available to you?

A. Yes, there were several changes at our insistence, or perhaps I should say because of our dissatisfaction with [2804] playing two theatres on Hollywood Boulevard.

We finally induced Fox to give us or make available to us the Vogue Theatre instead of the Iris and the Guild.

And at one time on at least one picture, I remember, the Carthay Circle was added to the unit. It happened to be a rather important picture, and we felt that the business it would do would justify the addition of another theatre.

Sometime during this period, and I do not recol-

(Testimony of Foster M. Blake.)

lect whether it was '48 or '47, the Culver Theatre was added and for the most part played there on out, but, generally speaking, it was five theatres.

Q. All right. Now, by 1950 what was your job at Universal?

A. From January 1, 1950 I moved to New York to assume the duties of Western Division sales manager.

Q. Did you give any attention to the matter of this first-run situation for Universal pictures in Los Angeles? A. Yes, I did.

Q. And what attention did you give to it and what did you do?

A. Well, I was constantly watching—I was constantly discussing any changed circumstances or conditions that might have arisen with the local branch manager or our then district manager supervising this territory.

I probably was the first one of our people to express [2805] a growing dissatisfaction with what we had been doing in playing this first-run unit from 1946 up until then. Business had declined materially—

Q. You mean business generally?

A. Yes, theatre grosses generally.

Q. You mean in this unit or generally?

A. We found it declined with relation to our pictures. That is all we know. We found that they declined in this territory. That is all that concerned us, and we found that carrying these five theatres, and by "carrying" I mean the theatres had to pay

(Testimony of Foster M. Blake.)

their overhead and our film rental earning was directly or indirectly dependent upon those overheads as well as the grosses, and it was at that time that we began thinking in terms of some other arrangement that we could work out for first run Los Angeles. [2806]

Q. In what direction did you think you would go, did you consider going?

A. Reducing the number of first run theatres.

Q. When did this sort of discussion start at Universal?

A. These discussions started in 1950 and came to a conclusion in the early summer of 1951. There was a great deal of study, discussion, and what you might call research involved over a period of many months between and among our people here, and involving myself.

Q. So that during this period when the Paradise was asking a first run, you were thinking of decreasing the number of Universal first runs?

A. That is correct.

Q. All right. Now, did you finally do something about this dissatisfaction that you had with so many first runs?

A. We did, but, of course, when we did that, we did a complete job and revised our entire pattern of distribution in what we call the greater Los Angeles area.

Q. What did you do?

A. We put this into effect in about, I believe, September of 1951.

(Testimony of Foster M. Blake.)

Q. What did you do?

A. We reduced our so-called first runs to three theatres. We offered our product to anyone having theatres in the central downtown area for one run, or to one run on Wilshire [2807] Boulevard, not including Beverly Hills, and one run on Hollywood Boulevard. Three at what we call show case runs.

And then after that we branched out into a pattern of subsequent run and outlying town play-off.

Q. How long did you continue that method of distribution?

A. We continued that until about late in 1953, I believe it was, but my answer has to be qualified because we still play pictures that way in some instances now. In fact, we play in first run, three first run theatres at some times, and again since 1953, we may play in as high as nine or ten first run theatres. We have a varied plan or pattern of distribution and first run play-off now, which is controlled to a great extent by the nature of the picture.

Q. Well, since 1952, just describe generally what you have been doing so that the jury can understand how you have been licensing since that date.

A. Generally since then we have been trying to first put together the three theatres in the three show case areas that I defined a moment ago, and then add to that, supplement those three theatres with six or seven theatres, whether they be drive-ins or otherwise, in the entire greater Los Angeles area.

Q. On what type pictures?

(Testimony of Foster M. Blake.)

A. Our type of pictures. [2808]

Q. What do you do with your better pictures?

A. Well, in some cases we try to have a single theatre run.

May I set an example of pictures such as *Magnificent Obsession*. We played that in one theatre for, I believe it was seven or eight weeks, the Warner Beverly.

On the other hand, one of the most important pictures we have had in recent years was a picture called *To Hell And Back*, but a different type of important picture. We felt that that best lent itself to the multiple run play-off, and consequently I believe we played first run on *To Hell And Back* in, I believe, 10 theatres, nine or ten.

Q. What was your reason for going to this multiple run play-off on at least some of your pictures?

A. Well, like everything else, it was a matter of changing circumstances and changing conditions. We were finding that after we were coming off of the three show case runs, that the better subsequent run playing time in the so-called 7 day towns, we call it the first swing, was not available to us because these better outlying theatres were finding themselves able to obtain first run product.

Q. Of other companies? A. Yes.

Q. In other words, somebody got there before we did and the playing time was gone, and we had to go into secondary [2809] theatres. In some cases we had to forego runs in some areas where

(Testimony of Foster M. Blake.)

a great deal of film rental should have accrued to us.

So we thought the only thing we could do would be to make our pictures available first run in a wider sense and in a wider area.

We were finding that an important theatre in one of the outlying Los Angeles areas would rather play a relatively lesser picture first run than a somewhat better picture subsequent run.

It is all picture by picture, and what we do depends a great deal on the individual picture we happen to be selling at that particular moment, the type of picture, its grossing potential.

Q. Were theatre conditions generally after 1953 any different than they were in 1950 and 1951?

A. Theatre grosses were declining, or at least we were having increasing difficulty in maintaining our grosses.

Q. This selling of your product in the Los Angeles metropolitan area, these various methods that you adopted for these many years, were those done as a result of any arrangement or understanding or conspiracy or combination or agreement with Warners or Paramount or Loew's or Twentieth Century-Fox?

A. Absolutely not. In fact, this overall revised pattern of distribution that we were instituting in September [2810] 1951, which I testified was discussed among ourselves for many, many months prior to that time, was a big secret. We were only discussing it with ourselves. We certainly weren't

(Testimony of Foster M. Blake.)

asking for advice or consulting with anyone else, either other distributors or certainly not theatre people, until we got ready to announce the plan, and it turned out that we were the only company at that time that had made such an announcement of a general overall pattern of distribution, which we considered would be fair to all and give us the best possible return.

Q. How about this arrangement that you made with Fox West Coast? Was that the result of any understanding, deal, combination, conspiracy or agreement with anyone else other than Fox West Coast, particularly with Twentieth Century-Fox or Paramount, Loew's, or Warners?

A. Absolutely not.

Mr. Mitchell: That's all, your Honor.

The Court: Ladies and gentlemen of the jury, we are about to take another recess. Again it is my duty to admonish you you are not to discuss this case with anyone, you are not to allow anyone to discuss it with you, and you are not to formulate or express any opinion as to the rights of the parties until this case has been finally submitted to you.

With that admonition, court will now stand in recess until 11:15. [2811]

(Recess.)

The Court: Stipulate the jury is present in the box?

Mr. Corinblit: So stipulated, your Honor.

Mr. Mitchell: Yes.

(Testimony of Foster M. Blake.)

The Court: Mr. Johnston, do you have any questions?

Mr. Johnston: No, your Honor.

The Court: Cross examine.

Mr. Corinblit: Thank you.

Mr. Johnston: At least not at the moment.

Cross Examination

Q. (By Mr. Corinbilt): Mr. Blake, I *testified* you testified that you were in Los Angeles from 1946 to 1949, is that right? A. Yes, sir.

Q. Located here as branch manager?

A. As district manager during that period.

Q. And then you became—in 1949 you went to New York? A. The end of 1949.

Q. Still as district manager?

A. No, as division manager.

Q. Western division?

A. Western sales manager, yes.

Q. You stayed in New York through 1951, or you are still [2812] there in this capacity as western division manager, is that right?

A. The same, yes.

Q. The same position. Now, you testified that there were some conversations that you participated in with Mr. Zabel and Mr. Scully. Were you in on the very first conversations?

A. I doubt if I was.

Q. This was not your idea, was it, this unit idea? A. A theatre unit, no, it was not.

Q. It was someone else's idea, I take it, an idea

(Testimony of Foster M. Blake.)

that came from somebody further up in the echelon, and not further down? A. That's right.

Q. The president of your company was Mr. Blumberg at that time? A. Yes.

Q. You know, of course, that he and Mr. Skouras are the people who initially discussed this matter, don't you? A. I know no such thing.

Q. You don't?

A. No. I did not know it, I never did know it.

Q. You don't know Mr. Skouras, Mr. Blumberg and Mr. Pantages discussed this matter prior to any of your discussions?

A. I certainly do not. [2813]

Q. But, on the other hand, you weren't there the first time and so you don't know who discussed it the first time, do you, in fact?

A. I think I know who conceived this idea. After all, I was in a lot of discussions with my own people about this unit.

Q. You are certainly not testifying that Mr. Blumberg did not participate in the decision?

A. No, I can't.

Q. He did participate in the decision?

A. I don't know that he did.

Q. You don't know that he did?

A. No, sir. My only knowledge of Mr. Blumberg's being involved in this matter was when he was told what we had done, and he expressed pleasure with the outlook of having a consistent home for Universal pictures.

(Testimony of Foster M. Blake.)

Q. But you don't remember that he was regularly consulted about your negotiations?

A. I don't remember it because I don't know it to be a fact. He may have been informed. The president of the company is entitled to that, of course.

Q. Did you tell Fox West Coast what theatres you wanted in that unit, or did they tell you what theatres they would make available?

A. I am sorry. I didn't hear. [2814]

Q. Did you tell Fox West Coast what theatres you wanted in the unit, or did Fox say to Universal, "These are the theatres that we will give you"?

A. We went to Fox and told them where we wanted theatres, the approximate area, and they in turn offered us certain theatres of their choice.

Q. All right. Let's get these areas defined. You went to Fox and you told them—

Mr. Corinblit: Mr. Murphy, I wonder if we could take this map down from here. That's fine. Thank you.

Q. You went to Fox and you told them you wanted a theatre, one of the places you wanted a theatre was Culver City, is that it?

A. No, we did not.

Q. You did not tell them you wanted a theatre in Culver City?

A. You are speaking of the period immediately prior to 1946 when we put together this unit?

Q. Yes.

A. The Culver City was not involved at that time.

(Testimony of Foster M. Blake.)

Q. So that you didn't tell them at that time you wanted the Culver City area? A. No.

Q. What areas did you tell Fox you wanted your theatres in? [2815]

A. Primarily downtown and Hollywood Boulevard, which is what we had had in the Pantages and Hillstreet.

Q. In addition to the primarily, what other areas?

A. We couldn't assemble the number of seats in downtown and Hollywood Boulevard to give us a chance to offset and equal the RKO theatres, so then we considered going on to Wilshire Boulevard, and the Ritz or the El Rey Theatres were offered and we chose the Ritz.

Q. You chose the Ritz?

A. I explained in answer to Mr. Mitchell's question a while ago why, how and why we went into the North Hollywood or Studio City area.

Q. Mr. Blake, did you tell Fox in 1946 that you wanted to go in Studio City? A. Yes, sir.

Q. You did, and you told them you wanted to go on Wilshire Boulevard and you told them you wanted to go downtown? A. Yes, sir.

Q. And told them you wanted to go on Hollywood Boulevard? A. Yes, sir.

Q. Did you go to any other theatre owners and ask them whether they had a theatre in Studio City, for example, that they would like to play Universal pictures in? A. No. [2816]

Q. You did not? A. No.

(Testimony of Foster M. Blake.)

Q. Of course, you didn't go to any theatre on Wilshire Boulevard and do that, because there weren't any other theatres other than Fox on Wilshire Boulevard, were there?

A. Could be, but I don't think it would have made any great difference.

Q. That is, you still would have gone to Fox?

A. We went to the people that had the most of what we wanted. I think that was a very logical thing to do. That was our best judgment at that time.

Q. Without regard to logic, Mr. Blake, this is just a simple question. The fact is that on Wilshire Boulevard Fox was the only company that you could go to, isn't that right?

A. I am trying to remember the conditions that existed in 1946. I guess the same theatres under more or less the same operation were in existence at that time, so Fox were the only ones who had any theatres to offer us on Wilshire Boulevard, I believe.

Q. All right. Now, on Hollywood Boulevard, you went to Fox, I take it. Did you discuss getting into any theatres other than the theatres you have mentioned on Hollywood Boulevard, that is, did you discuss at that time with your superiors whether it was possible to find any other theatre [2817] on Hollywood Boulevard in which you could license your pictures?

A. I don't know whether we discussed it with Fox. We were pretty much aware of what was go-

(Testimony of Foster M. Blake.)

ing on and we knew that we would probably have to find theatres that were not already pretty well occupied with other product.

Q. What did you know about the situation on Hollywood Boulevard in 1946?

A. We knew that the Warner Hollywood was almost exclusively, if not absolutely exclusively, playing Warner pictures.

We knew that the Hollywood Paramount was playing principally Paramount pictures.

We certainly knew the condition at the Pantages Theatre, which was part of the reason for what we were doing, that they played RKO and Columbia product to the point where there was very little playing time for anyone else. [2818]

There was a theatre from the lower end of Hollywood Boulevard called the Hawaiian Theatre. That was a part of a unit of theatres playing almost entirely United Artists product. So again on Hollywood Boulevard it looked like Fox or no one.

Q. How about downtown? What did you know about the situation downtown?

A. A similar condition existed in relation to Warner's downtown and downtown Paramount and the RKO Hill Street, the Los Angeles Theatre and the Loew's State Theatre.

Q. What was the situation re the Los Angeles Theatre? A. The Los Angeles Theatre?

Q. Yes.

A. I believe at that time it was part of a unit that included the Chinese. At least it was a unit

(Testimony of Foster M. Blake.)

that was playing almost exclusively Twentieth Century-Fox pictures.

Q. Los Angeles was?

A. The Los Angeles Theatre.

Q. How about the Loew's State?

A. The Loew's State Theatre, I believe, was playing MGM almost exclusively.

Q. Well, just so the record isn't confused, Mr. Blake, it might refresh your recollection by saying it was just the other way around.

A. Was it? It could very well have been. [2819]

Q. The Los Angeles was playing Metro product and Loew's State the other.

A. Thank you.

Q. Now, after you—let us talk about 1946. Did Warner's ever come to Universal and say, "We would like to play Universal product," in 1946?

A. Prior to 1946 or prior to the inception of this unit?

Q. Prior or after. A. I don't believe so.

Q. Did the Paramount Theatre ever come to Universal and say they wanted to play your product?

Mr. Mitchell: The Paramount didn't do it. If it was done it must have been Fanchon and Marco who was running the Paramount.

Q. (By Mr. Corinblit): Anyone representing the Paramount. A. No.

Q. Now, before 1946 there had been an independent theatre knocking at your door for many

(Testimony of Foster M. Blake.)

years, hadn't there, trying to get first-run pictures—the Hawaiian Theatre?

A. But at that time when we decided to try to obtain a unit of our own the Hawaiian Theatre was part of a very definite group of theatres, a United Artists Theatre.

Q. Without regard to that time, but at a prior time, there had been an independent theatre on Hollywood Boulevard [2820] which had regularly tried to get your pictures for first run and you refused because you wouldn't sell them to an independent, isn't that right? A. No.

Mr. Mitchell: That is immaterial. It is prior to the time here.

The Court: Overruled.

The Witness: The Hawaiian Theatre did play some of our pictures. After all, this condition in the Pantages and Hill Street Theatres didn't happen overnight. It was a gradual process.

I believe I testified a while ago that for a considerable period, maybe a year and a half or so, we were literally in the street with our pictures. We were selling them wherever we could. We sold a great many of our pictures to the Hawaiian Theatre. We didn't refuse them, but I believe it was in 1945 that the Hawaiian Theatre became a thing—a part of the thing we are talking about—they became a part of a unit playing United Artists.

Q. (By Mr. Corinblit): You are not testifying that you went to the Hawaiian Theatre in 1945 and asked them to play your pictures regularly?

(Testimony of Foster M. Blake.)

A. No, I am not, because we weren't asking anyone in 1945.

Q. Mr. Blake, I want to show you an exhibit that has [2821] been admitted in evidence. It is Exhibit 46-A-16, which is the Universal playoff for 1945.

I call your attention to the first page thereof which includes some two, four, six, eight, ten, twelve, fourteen, sixteen pictures on the first page running from January '45 to May of 1945.

Now, during that period how many pictures did you play in the—how many pictures did you play in any theatre other than Fox Theatres or RKO Theatres? A. On the first page?

Q. Yes.

A. I presume you are considering the Four Star Theatre a Fox Theatre?

Q. It was a Fox Theatre at that time, was it not? A. I believe it was.

Q. All right. How many?

A. There are two pictures that played in the Hawaiian Theatre.

Q. And what are the names?

A. See My Lawyer and Night Club Girl.

Q. And they were on the same bill, is that right?

A. Double bill.

Q. Would you describe those two pictures as turkeys or dogs?

A. What is the difference? [2822]

Q. All right. That is, they are one or the other.

A. I don't recall the relative quality of them. I

(Testimony of Foster M. Blake.)

know they weren't tremendous smash hits or anything like that.

Q. All right. So it is true, is it not, that during this period prior to May of 1945 that Universal played, certainly all of its top pictures, in either RKO houses or Fox houses when you said you were on the street?

A. Mr. Corinblit, if you will look further on that list you will see that the Hill Street and Pantages played them and the Loew's—I mean the Chinese Theatre played in some unit.

Are you comparing the Hawaiian Theatre as a potential outlet with the Hill Street or the Pantages?

Q. Mr. Blake, my question to you was only this: Whether it is not a fact that during that period all of the suitable first-run pictures that Universal had went either to RKO or Fox.

A. On that date, yes.

Q. And you know during that period that the Hawaiian Theatre was not connected with any unit whatsoever, don't you?

A. I didn't notice the date of that period you are speaking of.

Q. All right. I will show you Plaintiff's Exhibit 46-A-15, which is a playoff of United Artist [2823] pictures and call your attention to the picture G. I. Joe which opened at the Hawaiian August 8, 1945. Does that refresh your recollection that prior to August 1945 the Hawaiian Theatre, an independent theatre, was free of any connection with any unit?

(Testimony of Foster M. Blake.)

A. I recollect G. I. Joe was the first picture in the United Artists unit, but I don't remember the date of the other picture you were questioning me about.

Q. I will show that to you again so we can get it clear.

It is a group of pictures that you testified to that ran from January to May of 1945 and prior to any connection of United Artists with a unit, is that right? A. Yes.

Q. Now, let us take it over until August 1945 which gives us another one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve pictures.

A. Yes.

Q. Now, of that group of 12 pictures how many pictures played in any other theatre than a Fox theatre or an RKO theatre?

Mr. Mitchell: I think this is argumentative. The exhibit is there, if he wants to deal with it fairly. They most all played in the RKO, I believe. I haven't looked at it, but that is what their policy was, and when you say "or Fox" you are making it appear as though he is playing somewhere other than RKO. [2824]

To amount to anything I think the exhibit itself can be read to the jury. That is all he is doing. He is heading from an exhibit, and it is argumentative.

* * * * *

The Court: Well, maybe the witness can testify from his own independent recollection.

(Testimony of Foster M. Blake.)

Q. (By Mr. Corinblit): Can you testify from your own recollection, Mr. Blake, on that? [2825]

A. Only generally speaking that we played some pictures in the Hawaiian Theatre prior to the time it became a part of the United Artists. As to the quantity I couldn't tell you without referring to the record. [2826]

* * * * *

Mr. Corinblit: Incidentally, Mr. Blake, *Imitation of Life* and *East Side of Heaven* were reissues, weren't they? A. That is correct.

Q. That is, they had been made at some prior time and were now being reissued?

A. That is right.

Q. And those are all the pictures prior to August 1945.

Now, what you were doing just before the time you went to Fox, Mr. Blake, was splitting your product between Fox and RKO, isn't that right?

A. We were not splitting it. We still had our basic commitment and desire to play the RKO theatres.

The product that RKO couldn't absorb we tried to sell in the best theatres that we could find other than the RKO house.

Q. And the only theatres you could find were Fox houses?

A. Fox had an awful lot of theatres here. Isn't [2828] it logical we would find Fox houses?

Q. You couldn't find an independent house?

(Testimony of Foster M. Blake.)

A. What independent houses were there outside of the Hawaiian?

Q. That is a good question, Mr. Blake. Now, when you had this discussion with Mr. Zabel and Mr. Scully you didn't do much talking at those conversations, did you?

A. I don't recollect. I think I was slightly out-ranked and I would let someone else do the talking.

Q. Your superiors were there at the time.

Now, I think you testified that after—that is, as far as the terms were concerned, you used to negotiate real hard with Fox on terms, is that right, picture by picture as they came out, is that right?

A. That isn't what I said.

Q. You didn't say that? A. No.

Q. I am sorry. Will you tell us what was the fact about negotiations for terms after you went into the unit?

A. The negotiations fell into a pattern somewhat similar to the manner in which we played many other Fox first run theatres, namely the sliding scale, which as such is not a bad way to play pictures, of course, and that depends on the nature of the scale itself. [2829]

Q. Now, a sliding scale that you fell into was a sliding scale of 20-40, wasn't it?

A. Yes, a 50-50 split.

Q. That meant up to a given point you would get a minimum of 20 per cent of the gross receipts for film rental. A. Yes.

Q. And as the gross receipts scaled up, you

(Testimony of Foster M. Blake.)

would get more of the gross receipts as film rental, is that right? A. Yes.

Q. Now, that sliding scale was made upon the—do you know what figures those sliding scales were based on? A. Of course I know.

Q. What were the elements that went into the figure?

A. The operating expenses of the theatre.

Q. The operating expenses?

A. Their fixed charges.

Q. Their fixed charges.

A. All the elements that go into the cost of theatres doing business. Advertising.

Q. Now, did you actually see the expense figures that were actually used, the items that were actually used in the sliding scale?

A. They were always available, and I am quite sure that I saw them, because I have argued house expenses with Fox and many other exhibitors for the most of my life. [2830]

Q. All right. Let's turn to the Guild Theatre. Do you know whether or not they included in the expense figure an item that covered a proportionate share of the income taxes paid by the entire national Fox West Coast chain? Do you know whether they did or not?

A. No, I wouldn't know.

Q. You don't know whether they did and you don't know whether they didn't?

A. That is correct.

Q. Do you know whether they included as one

(Testimony of Foster M. Blake.)

of the items in the expense figure for the Guild Theatre a proportionate share of the expense of maintaining a penthouse on Washington and Vermont atop the Fox Building, do you know that?

Mr. Mitchell: What is the materiality of this, your Honor.

The Court: Sustained. I was just waiting for an objection.

Q. (By Mr. Corinblit): Mr. Blake, the fact is that in the figure of administration which was included in the scale that you agreed to with Fox, you don't really know what items went into that administration figure?

Mr. Mitchell: Objected to as being immaterial. What is all this, your Honor? We don't need to be innuendo or otherwise run down here on facts which cannot be proved—— [2831]

The Court: Sustained.

Q. (By Mr. Corinblit): Mr. Blake, the playing of your pictures on a sliding scale—withdraw that.

Now, you continued to play your pictures in this unit of five theatres for about five years, is that right, through from 1946 to 1951?

A. Yes, sir.

Q. During that time you did not offer your pictures to any other theatre for first run in the city of Los Angeles?

A. We may have. I recollect that there were periods when even this unit with 52 weeks playing time a year did not quite absorb all of our product,

(Testimony of Foster M. Blake.)

and you must remember that in those days we were making, as I said before, between 50 and 60 pictures a year. That alone on one week runs, if we played them all as top pictures, would have been more than sufficient to book the unit.

I believe that occasionally we played a few programs outside the unit, but the unit belonged to us and we were interested in building up to a percentage, and naturally we played the very best pictures that we had in the unit.

Q. When you say you played outside of the unit, Mr. Blake, I want to get this clear. You never played a single picture in any house other than a Fox house or United Artists Downtown?

A. I am not sure whether we did or not. That [2832] may be correct and it may not. The records will have to disclose that.

Q. I will show you the play-off of Universal pictures in the Los Angeles area from 1946 to 1951 and ask you to run your eye down the list of theatres and tell me if you find a single picture played in any theatre other than a Fox theatre or the United Artists Theatre.

Mr. Mitchell: I object to that as being argumentative. He is just asking the witness to read from a document already in evidence.

Mr. Corinblit: The witness has testified he doesn't remember whether or not they played——

The Court: Just a minute.

Mr. Corinblit: Yes, sir.

The Court: Objection overruled.

(Testimony of Foster M. Blake.)

The Witness: How far shall I go?

Q. (By Mr. Corinblit): You can do it in a hurry. Just run your eye down this column all the way through 1951.

A. I have to try to remember whether they were Fox theatres, you know, or were at that time.

I find one here.

Q. Which picture?

A. October 1947, the picture called *The Seventh Veil*.

Q. It played in the Marcal?

A. Yes. [2833]

Q. Go ahead.

A. The Marcal was not a Fox theatre.

Q. Do you know whether that was a re-issue or not?

A. No, it was not. It was a very, very fine English picture.

Q. Go ahead. Run through 1951.

A. Through 1951? All right. That is the only one I find.

Q. So that refreshes your recollection that with the one exception all Universal pictures played in Fox theatres or the United Artists Theatre Downtown, is that correct?

A. Yes, that is correct. 90 per cent of those played in our Fox unit, though, which I have testified was our main outlet.

Q. Not only is it true they played only in Fox houses, with that one exception and the United Artists Downtown, but the fact is that you didn't

(Testimony of Foster M. Blake.)

offer your pictures to anybody else other than the group of theatres I mentioned, other than Fox?

A. After we finished booking the unit, if we had pictures left over, you might say, I don't know whether we went to anyone else or not, but possibly, since we were playing the unit of Fox theatres and we were finding ourselves backed up with product, it would be quite logical, I think, to go to Fox and say, "We went to get in that other unit." [2834]

Q. But you did not during this period, you don't have any recollection of ever asking anybody else during this period to play your pictures, other than Fox and the United Artists Downtown?

A. That is correct.

Q. I think you testified that after you started out the unit, some time after you started out the unit, you went to the Culver Theatre in Culver City as one of the Theatres. That is out here (indicating). A. Yes.

Q. Was that area of Los Angeles in the opinion of your company, if you know, a suitable area for first run pictures?

A. According to the best judgment available to us at that time, it was.

Q. The Culver City area was? A. Yes, sir.

Q. You know where the Paradise Theatre is located, don't you? A. I do.

Q. Will you tell me what are the characteristics of the Culver City area, what were the charac-

(Testimony of Foster M. Blake.)

teristics of that area at that time that made that a suitable first run area?

A. Well, at the time that the Culver was incorporated into our first run unit, I seem to recollect that the Westchester area was a bunch [2835] of bean fields for the most part. It was just beginning to be developed.

The Court: I don't think you were asked about the Westchester area.

Read the question.

(Question read.)

The Witness: Oh, I see. Well, it was—I can't remember the decisions upon which—I mean the exact factors upon which our decision was based at that time, but Culver City was a fairly thickly populated area, and we felt that the addition of some more seats to our unit would be advantageous to us.

Q. (By Mr. Corinblit): That is to say, the population of the Culver Theatre area was sufficient to make up a suitable first run area, and the transportation facilities in the area were suitable, as were all the other geographical conditions, they were all suitable so that the Culver Theatre was a suitable first run area in 1946?

A. We thought so.

The Court: Counsel, can I ask a question? As far as population is concerned, how much population does it take to support a first run theatre?

The Witness: I don't think I can answer that question specifically, your Honor.

(Testimony of Foster M. Blake.)

The Court: You said the population was sufficient. What do you mean? [2836]

The Witness: I mean it was comparatively densely populated, the area, and it compared favorably with the area in which we were playing our pictures in Studio City, and there was another factor—I don't want to digress, but by that time there was an indication of a little weakening in grosses. We were interested at that point in adding a few more seats to increase our possible gross.

Q. (By Mr. Corinblit): You say at that time you were interested in adding some theatres to the unit? A. Yes.

Q. Now, do you have any idea what the population of the—I will withdraw that.

You knew in 1946 that the Loyola Theatre was operating first run?

A. I don't remember the exact date it started but it probably was 1946.

Q. Have you any idea what kind of profits the Loyola Theatre was earning in the Westchester area?

A. I know nothing about that.

Q. The record in this case, Mr. Blake, shows that the Loyola Theatre in 1948 earned more net profit than the Chinese Theatre. Did you know that?

Mr. Mitchell: He said he doesn't know anything about it so how can he answer the question?

The Witness: I don't know.

(Testimony of Foster M. Blake.)

Mr. Mitchell: And what if he does? I object to the question.

The Court: Objection sustained.

Q. (By Mr. Corinblit): Now, Mr. Blake, turning your attention to 1950. You know that the Paradise Theatre asked your company to permit it to play Universal pictures on a first run basis, don't you? [2838]

A. Yes. I am aware that a request was made.

Q. That a request was made? A. Yes.

Q. And you are aware that Universal refused that request? A. Yes, I am.

Q. When in 1950 and '51—early in 1950 a request was made by the Paradise Theatre for the opportunity of playing your pictures on first run in Los Angeles, did you participate in the discussions with the people in your company to make the decision that you would refuse? A. Yes, sir.

Q. And who did you talk to?

A. I discussed it with Mr. Scully, who was still with us in 1950—

Mr. Mitchell: What did you say? "Still with us in 1950"?

The Witness: Yes, sir. And discussed it with our local branch manager and our West Coast District manager. [2839]

Q. (By Mr. Corinblit): You say you discussed that matter with Mr. Marriott, the branch manager here?

A. I know I discussed it with Mr. Rose and I am sure that Mr. Marriott would be present be-

(Testimony of Foster M. Blake.)

cause I make it a practice of having the branch managers in on these kind of discussions.

Q. So that he participated in the decision which led to the refusal of the Paradise on first run?

A. No, I don't think he participated in the decision. He participated in the discussions.

Q. Did you tell him the reasons why Universal would refuse to license the Paradise first run?

A. I don't remember whether we told him or not.

Q. You don't remember whether that matter was discussed with Mr. Marriott at all?

A. I don't remember that.

Q. Now, do you know how many people there were in the Westchester area in 1950-51?

A. No.

Q. And you didn't know in 1950 and '51 how many people there were? [2840]

A. No. I don't know whether I knew then or not, I beg your pardon, but I don't know now.

Q. Well, now you didn't turn the Paradise down in 1951 because they didn't have enough population around it did you? A. No.

Q. That was not the reason? A. No.

Q. That is to say, the Paradise area, Westchester area had sufficient population to support a first run theatre in 1950 and '51?

A. I am sorry, I couldn't hear all of that question.

Mr. Corinblit: Will you read the question.

(Question read.)

(Testimony of Foster M. Blake.)

Mr. Mitchell: Object to the question on the ground the witness said he didn't know what the population was.

The Court: Objection sustained. He already has said he doesn't know how many people it took to support a first run theatre.

Mr. Corinblit: He said he knew the Culver area had enough people for a first run theatre.

The Court: But he says he doesn't know how many people there were in the Paradise area.

Q. (By Mr. Corinblit): Now, you testified, Mr. Blake, I believe, that your company, which during this period was playing as many as five theatres on a multiple first run—that was 1946 to 1951?

A. Yes.

Q. You testified that since that time, sometime in 1953, you are now playing as many as 8, 9, 10 or 11 theatres on first run? A. Yes, sir.

Q. At the same time? A. Yes.

Q. Now, would you say that out of—could you give me an idea as to the total number—for [2841] example, if you have 50 pictures out of those 50 pictures how many do you sell multiple day and date as distinguished from playing in one or two theatres?

A. I would like to correct the number of pictures. It has something to do with this. We don't have more than 30 pictures a year now.

Q. All right. How would it affect you—

A. Affect us in what way?

Q. Well, Mr. Blake, before you came here to testify I read into evidence the list of Universal

(Testimony of Foster M. Blake.)

pictures from June of 1955 to July of 1956. There were about 32 pictures that Universal played first run from 1955 to 1956 and that list showed that out of that 31 you had two pictures on something that we refer to as a pre-release, or playing an exclusive and every other one played on multiple day and date policy in always more than seven or eight theatres.

Does that proportion sound correct as to the period prior to 1955—that is when you first began this policy.

Mr. Mitchell: What period prior to 1955?

Q. (By Mr. Corinblit): Well, you testified you began the multiple day and date policy when? Was that in 1953?

A. I believe 1953, late in 1953.

Q. I want to know from 1953 to 1955 whether you played roughly 5 per cent or 8 per cent of your pictures on an exclusive basis and played all the rest of them, 92 or 95 per cent [2842] on the multiple run basis.

A. I believe that from the time we started the multiple runs until this point, where you seem to draw a division that a lesser proportion of our pictures played multiple run that they did during the period you quote.

Q. You can't tell me what proportion?

A. No, I can't.

Q. Now, this policy of multiple day and date in 7, 8, 9, 10 and 11 theatres has proved to be a successful policy for Universal, has it not?

(Testimony of Foster M. Blake.)

A. It has recently, yes.

Q. Now, turning your attention to the period 1946 to 1951.

You testified that Universal pictures—you testified as to the quality of Universal pictures in comparison with the quality of pictures of other companies.

Now, you remember that from 1946 to 1955—well, let us just talk about the last year, 1950-51. You were playing regularly in five theatres and they included small theatres for the most part—that is, the five theatres in the unit, except the United Artists downtown—were fairly small theatres, isn't that right? A. Yes, sir.

Q. Now, at the same time that you were playing in that manner Loew's was playing only in two theatres. Do you remember that? [2843]

A. I believe that is correct.

Q. Two or three theatres?

A. (No answer.)

Q. Now, do you have any knowledge how your pictures did in the Los Angeles area which were comparable to Loew's pictures in the Los Angeles area?

A. I know nothing about what Loew's pictures did.

Q. You don't have any knowledge about Loew's box office performance?

A. No, of course not. I do know when a picture seems to be doing business. I read trade papers, reports and things of that sort.

(Testimony of Foster M. Blake.)

The Court: Mr. Corinblit, you have just rung up a no sale, so I think we will take our noon recess at this time.

Ladies and gentlemen, we are about to take another recess and again it is my duty to admonish you you are not to discuss this case with anyone and you are not to permit anyone to discuss it with you.

You are not to formulate or express any opinion as to the rights of the parties until the case has finally been submitted to you.

With that admonition we will now recess until 2:00 o'clock this afternoon.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m. of the same date.) [2844]

Friday, August 10, 1956, 2:00 P.M.

The Court: Stipulate the jury is present in the box?

Mr. Mitchell: Yes, your Honor.

Mr. Corinblit: So stipulated, your Honor.

The Court: You may proceed.

Mr. Corinblit: Your Honor, it was called to my attention that I have forgotten to offer the exhibit with respect to the Warners testimony before. We will offer this exhibit entitled the Warners play-off as plaintiff's exhibit next in order.

The Court: It may be admitted in evidence.

The Clerk: Exhibit 85.

(The exhibit referred to was received in

evidence and marked as Plaintiff's Exhibit No. 85.)

FOSTER M. BLAKE

the witness on the stand at the time of the recess, having been heretofore duly sworn, was examined and testified further as follows:

Cross Examination—(Continued)

Q. (By Mr. Corinblit): Mr. Blake, at the time in 1946 when the Universal first run unit was set up, there were included in the unit [2845] five theatres, all of which at that time were being operated by Fox West Coast, isn't that correct?

A. That is correct.

Q. And that included the United Artists Theatre? A. Yes, sir.

Q. Subsequently Fox West Coast gave up any proprietary interest they had in the United Artists Theatre and the unit continued with the United Artists Theatre in it? A. Yes, sir.

Q. So at that time you had a unit which included a theatre operated by United Artists and four theatres operated by Fox West Coast?

A. Technically, yes, sir.

Q. When you continued during the period from 1946 to 1951 to license you—I think it was about 1947, started licensing the Culver Theatre in the Culver City area—to license your pictures only to the Culver Theatre in the area, that had nothing to do with the fact that you—withdraw that.

You didn't know one way or another whether you could get more money from some other theatre, did

(Testimony of Foster M. Blake.)

you, in that area, in the southwestern part of Los Angeles? A. I don't suppose we did.

Q. You didn't know one way or the other. Do you remember, incidentally, did the Culver gross as much on the Universal [2846] pictures as the Ritz Theatre? A. I don't remember.

Q. Do you recall generally the Ritz Theatre did gross more, or don't you know one way or the other?

A. I should think that the Ritz Theatre on an average——

The Court: We are not asking what you would think. If you don't remember, just say you don't know.

The Witness: I don't remember.

Q. (By Mr. Corinblit): As a matter of fact, you knew full well in 1950 and 1951 that a theatre in the Paradise area would gross more for Universal on first run than a theatre in the Culver City area?

A. I don't know that I knew that.

Q. You don't know that you knew that?

A. No. I don't recollect having that knowledge.

Q. You know, don't you, that the Loyola Theatre playing first run outgrossed the Ritz Theatre playing first run in 1948 and 1949 and 1950?

A. They weren't playing the same pictures. Probably outgrossed them, yes.

Q. The figures are in evidence, Mr. Blake.

A. I am sure the average gross of the Loyola was in excess of that of the Ritz, yes.

(Testimony of Foster M. Blake.)

Q. In excess. A. Yes. [2847]

Q. Now, turning to just the good pictures — Universal did have some good pictures sometimes. You don't mean to run down all of Universal's pictures, do you, in your testimony? A. No.

Q. As a matter of fact, there were some pictures that I think your company was proud to make during that period, isn't that right? A. Some.

Q. There were some? A. Yes.

Q. You didn't feel with respect to those good pictures that you had, having in mind your knowledge about the Loyola, you knew full well that in the Paradise area in 1950 you could have grossed more than you could have by playing in the Culver City area, didn't you?

A. It is possible, but I don't know that it is true.

Q. Now, as a matter of fact, in each and every area where you played first run from 1946 to 1951, you didn't give any attention to the fact of whether you could obtain more money from an independent theatre in the same area, did you?

A. I don't think we did.

Mr. Corinblit: No further questions. [2848]

Redirect Examination

Q. (By Mr. Mitchell): Mr. Corinblit asked you about the requests that the Paradise Theatre people made in 1950 of Universal for first run.

Why didn't you give them first run in 1950?

A. By that time we were thinking in a different

(Testimony of Foster M. Blake.)

direction, namely, that of shrinking our number of first run theatres.

On the basis of conditions and circumstances existing at that time we felt that they were—that we were overextended. True that is somewhat of a reversal of our previous opinion but there had been a drastic decline in our first run grosses and we felt that carrying these five, or let alone more, overheads would avail us nothing and only dilute our subsequent run revenue from those outlying areas.

Mr. Mitchell: That is all.

Recross Examination

Q. (By Mr. Corinblit): Mr. Blake, during the period from August 1950 to September 18, 1951, the damage period in this case, you had five first run outlets in the city of Los Angeles, isn't that right? [2849] A. That is right.

Q. In other words, your thinking about decreasing the number hadn't yet reached the point where it had been put into a policy, had it?

A. No. We went along with what we had until we could find a better plan.

Q. And you didn't come across with a better plan until about when? Was that 1952?

A. In 1951 we came up with the new plan and that was pretty much clarified and agreed upon among ourselves in Universal in the early summer of 1951.

Q. My point is, when did you put the plan into effect? A. September of '51.

(Testimony of Foster M. Blake.)

Q. That was after September 18, 1951?

A. I don't know the exact date. It was late in September of 1951.

Q. All right. Now, this matter of overhead, Mr. Blake, when you play a percentage picture, a straight percentage picture, is the matter of overhead involved on a straight percentage picture?

A. Not directly, no.

The Court: Now, that has nothing to do with redirect examination or recross. The only thing asked was on one subject.

Mr. Corinblit: I think Mr. Blake gave the [2850] answer, your Honor, but it is not too important. I have no further questions.

The Court: May this witness be excused?

Mr. Mitchell: No, I want to fix that date. I think we can fix it when the new plan went into effect.

Redirect Examination

Q. (By Mr. Mitchell): Mr. Blake, I will show you a copy of a letter dated August 17, 1951, from Mr. Marriott to Mr. Harry Rackin of Exhibitor's Service and ask you to look at that and tell me whether you can refresh your recollection from that as to when you determined upon this new plan of three theatres for first run?

A. This is a bid invitation sent to——

The Court: That is not the question. Read the question to the witness.

Q. (By Mr. Mitchell): Does that refresh your recollection? A. It does.

(Testimony of Foster M. Blake.)

Q. And by the use of that letter, can you tell me when you established your three-theatre first run plan? A. September 26, 1951.

Mr. Mitchell: That is all.

Mr. Corinblit: Just one question, your Honor. I just want to read the three pictures that played [2851] after the determination of this plan on the Universal group, August 29, 1951.

Francis Goes to the Races, United Artists, Ritz, Iris.

In September Little Egypt, United Artists, Ritz and Iris.

September 20, Thunder on the Hill, United Artists, Ritz and Iris.

Recross Examination

Q. (By Mr. Corinblit): The Ritz and the Iris were both Fox houses, weren't they?

A. Yes, sir.

Mr. Corinblit: No further questions.

The Court: May this witness be excused?

Mr. Corinblit: Yes.

Redirect Examination

Q. (By Mr. Mitchell): How were those pictures—what method did you use to license those pictures after September 26, 1951?

A. They were offered to all interested theatres on a bidding basis and the theatres that ultimately played the pictures did so as a result of evaluating those bids or subsequent negotiation. [2852]

The Court: May this witness be excused?

Mr. Corinblit: Yes.

The Court: You may be excused.

Call your next witness.

Mr. Mitchell: I will call Mr. Taylor.

ALFRED R. TAYLOR

called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

The Clerk: State your full name.

The Witness: Alfred R. Taylor.

Direct Examination

Q. (By Mr. Mitchell): What is your occupation, Mr. Taylor?

A. I am the branch manager of Paramount Film Distributing Corporation.

Q. And how long have you had that job?

A. In the Los Angeles office since March of 1945.

Q. You are familiar with the Paramount method of licensing pictures in 1950 and 1951?

A. I was, yes.

Q. I would like to have you describe for me generally, the manner in which Paramount licensed its pictures on a series of successive runs starting [2853] with the first and running through generally the successive runs, telling where you licensed your first run and where you licensed your 7 day runs, and so on.

Mr. Corinblit: Is this 1950-51?

Mr. Mitchell: '50-'51.

The Witness: Well, during the year 1950 and '51, we exhibited our pictures with rare exceptions,

(Testimony of Alfred R. Taylor.)

in the Paramount Theatre-Los Angeles, and the Paramount Theatre-Hollywood.

After that run was concluded, 7 days later, the 7 day availability was played in Inglewood, Huntington Park, Glendale, Pasadena. I believe that is all of the 7 day runs.

Q. (By Mr. Mitchell): Huntington Park?

A. Huntington Park. I thought I mentioned that.

Q. How many seven day runs in each of these outlying suburban cities?

A. We had one 7 day run in each area.

Q. Now, will you go on with your successive runs?

A. Then the next series of runs was the 14 day runs, and at that time in the Inglewood area we had on occasions one and on occasions two. We changed our system there and then we permitted Santa Monica to play, Beverly Hills, Westwood Village and at a later period the two theatres in the San Fernando Valley, and I believe that was all of the 14 day runs. [2854]

Q. Any 14 day runs in these outlying cities that played the 7 day situations?

A. I didn't understand.

Q. At that time did you have 14 day runs in Pasadena and Huntington Park, Inglewood and Glendale?

A. No. The only place where the 14 day run exhibited at that time was Inglewood as it compares to the other 7 day towns. [2855]

(Testimony of Alfred R. Taylor.)

Q. That is with your company?

A. That's right.

Q. Did you play another run later on?

A. Well, those towns that I have mentioned are what we call the fringe towns. In other words, they surround the core of Los Angeles, and on the 21 day availability we then came in closer to the urban area of Los Angeles, which would surround generally Los Angeles downtown and Hollywood, and then we also permitted theatres in the fringe area, such as Hawthorne would follow Inglewood, and Hawthorne would come in on the 21 day.

Q. Then did you have later runs than 21 days?

A. Yes. Then they went down in multiples of 7, 28 days, 35, 42, 49, and so forth.

Q. What is the advantage of licensing pictures in successive runs like that?

A. Well, it is really one of the lifebloods of our business in our opinion. You start off a picture in a key situation, such as Los Angeles, which is considered one of the keys in the United States, and you attempt to establish that picture for your territory. You spend considerable money advertising, and the exhibitor playing first usually charges a higher admission, and he therefore grosses generally more money.

The main thing, however, is to establish the picture. [2856] There are at times exclusive runs we have had where our advertising bill has been as great as our film rental. That is an exception to the rule, but there have been occasions such as that.

(Testimony of Alfred R. Taylor.)

Then you step down in the series of runs, 7, 14, 21 days on down as the picture goes down the line, usually the admission price is a little less. You stagger the runs. You can't have everyone playing the same day, because not everybody can go to the theatre at the same time.

In addition to that, not everyone wants to pay a dollar, which is the first run price, or 75 cents, which is the 7 day price, if that happens to be the case, so by the staggering of runs, you are able to meet every person in a different price income until you finally get down to the point where you may be playing pictures for 15 cents.

Then there is an economic value where the cost of prints is such that it is impossible for us to make prints for every showing in the United States. We have to make a limited number of prints. So it is impossible to play everybody first. Somebody has to play first, somebody has to play second, and somebody has to play third.

Q. How much did your prints at that time cost?

A. Well, I would say in 1950 and 1951, the cost of prints has gone up since that time, the cost is, of course, dependent upon the length of the print itself, the picture. [2857] A black and white print would cost from \$150 to \$200, a Technicolor print from \$600 to \$800.

Q. While a picture was being shown in those days in these two theatres operated by Marco—those theatres were operated by Marco?

A. Operated by Fanchon & Marco.

(Testimony of Alfred R. Taylor.)

Q. The active man was who?

A. Marco Wolff.

Q. While your pictures were being played there, did you have other prints that you used for some purpose during that period of time?

A. Yes. We usually had 12 to 16 prints, depending upon the cost of the picture at the time that it was playing in the two Paramount Theatres. At that time it was generally our policy to play at the same time in San Diego, Phoenix, Tucson, Bakersfield, Santa Barbara—in other words, those are towns that are what you might consider to be sub-keys. They were key towns in their own area, but, of course, smaller than Los Angeles.

By playing those towns at the same time, why, we have the advantage of Los Angeles advertising campaigns, which splashes over into those towns.

Q. What is the reason for the selection of those towns so far away from Los Angeles?

A. Well, they are the large towns in their area. [2858] San Diego is one of our large cities. Phoenix is like Los Angeles as far as Arizona is concerned. It is the most important town in Arizona.

The towns were generally a considerable distance from Los Angeles, so that it protects the Los Angeles run.

Q. What do you mean by protects the Los Angeles run?

A. Well, we feel that the most important town that we have in our entire territory is first run Los Angeles and first run Hollywood. We spend

(Testimony of Alfred R. Taylor.)

considerable money in advertising and we want to obtain every possible dollar from those runs.

Q. While you are playing these surrounding suburban cities in the Los Angeles metropolitan area, like Pasadena, Glendale, Inglewood, and so on, what use do you make of other available prints during that play-off?

A. In addition to the towns that I mentioned—you mean the day and date towns?

Q. Yes.

A. In addition to the towns we mentioned, we also played the pictures in Long Beach and San Pedro, Riverside, San Bernardino, the important subkey towns.

Now, if there was any additional prints that were not being used, we usually booked them into isolated towns, such as Bishop, Lone Pine, Flagstaff, Arizona, San Luis Obispo, towns that are away from any center, because if we were able to book those towns at that time, it relieves the [2859] print problem that arises at a later time when we have what we call our critical period, when the subsequent runs come in en masse and we find ourselves with a print problem.

Q. Do you think these isolated towns interfere at all with the revenue of the 7 day situations?

A. No. Generally speaking, they are very small, and the Los Angeles newspapers are distributed in those towns. They are usually family type theatres. We don't think that it does any harm.

(Testimony of Alfred R. Taylor.)

Q. What in 1950 and 1951 was the average cost of pictures made by Paramount?

A. Well, production costs have risen, of course, since then, too. I would say that the low production cost would probably have been in the neighborhood of \$600,000 and the high production cost somewhere in the neighborhood of \$2,000,000.

Q. And then are there other costs in addition to the production costs which you have to try to get back for your company?

A. Well, I can give you a concrete example right now. We have an exclusive engagement starting at the Paramount Theatre in Hollywood on *War and Peace*, on which we have production costs of slightly in excess of \$6,000,000. That is an exception to the rule, however. It is one of the most expensive pictures ever made. [2860]

I would say that our advertising bill nationally would run somewhere between \$500,000 or \$750,000. That includes newspaper advertising locally, and it includes ads in the *Saturday Evening Post*, *Life* and *Look* and magazines of that nature, and it includes radio and television advertising.

The print cost on the picture—it is unusual in length. It is 3 hours and 30 minutes in length. It is in Technicolor. I would say the print cost would be somewhere in the neighborhood of \$1,250 apiece. We would need from 450 to 500 prints in the United States. The print cost is going to be in the neighborhood of a half million dollars.

(Testimony of Alfred R. Taylor.)

So you have your production cost, your advertising cost, your print cost, plus your distribution cost.

Q. What do your distribution costs run, do you know, in terms of cost of production?

A. They are computed on the basis of 50 per cent of negative cost. In this event it would be \$3,000,000.

Q. What is the source of your income to return these huge costs.

A. The source of income comes solely from theatres to whom we license these pictures.

Q. How many theatres are there in the United States or were there in 1950 and 1951?

A. Well, I would hesitate between 1950 and 1951, because there was quite a number of smaller [2861] theatres in the United States closed at that time, but I would say there was somewhere between 20 and 25 thousand theatres in the United States at that time. However, you do not sell them all because they are competitive to each other.

In other words, you couldn't sell both the Chinese Theatre in Hollywood and the Paramount Theatre in Hollywood. You could only sell one as an example. So, though there may be that many theatres, you are not able to sell all of them your pictures. They are playing pictures from other companies.

We generally feel we have 16,000 potential customers in the United States.

Q. In the Los Angeles exchange area, what kind of film rentals were you getting? What was the

(Testimony of Alfred R. Taylor.)

variation of film rental in those days, from so much to so much?

A. In the entire territory I would say that our film rental low would be around the neighborhood of \$25,000 or \$30,000.

Q. I am talking about from each theatre.

A. Oh, from each theatre?

Q. Yes.

A. Oh, I see. Well, of course, it would all depend on whether the picture was shown as an exclusive run in Los Angeles and was successful. We have earned up to \$112,000 on an exclusive run, but if the picture just played in the Paramount [2862] Theatre Hollywood and Los Angeles, I would say our film rental could be \$20,000 in downtown Los Angeles and possibly \$15,000 in Hollywood on an exceptional picture. The film rental as it goes down the line could get down to \$12.50.

Q. And the people that pay the \$12.50, I suppose, have to play the picture very late.

A. Yes. They are usually delayed run theatres.

Q. With respect to your first run Los Angeles, at that time if you played the theatres operated by Fanchon & Marco, did you have an arrangement with those theatres?

A. We had a franchise with the Paramount Theatre in Los Angeles and the Paramount Theatre in Hollywood, which gave them the right to exhibit our pictures first run. [2863]

Q. And do you remember the expiration date of

(Testimony of Alfred R. Taylor.)

the downtown franchise and that of the Hollywood franchise?

A. The Hollywood franchise expired in September of 1951 and the downtown franchise in March of 1952.

Q. What was the clearance under those franchises?

A. Well, the clearance under the franchise stated that it would be the same clearance that was in effect during the 1938-39 season.

Q. And what was that clearance?

A. That clearance that gave the two Paramount theatres clearance over the surrounding areas in the case of Inglewood and those that I mentioned, Glendale, Pasadena 7 days,—in other words, it gave them the clearance that I related a little earlier.

Q. Well, I would like to have you state the clearance now so that we will have it in one place.

A. I see.

Mr. Corinblit: Just a minute. I will object to that. I think the best evidence is contained in the agreement itself.

Mr. Mitchell: No, no.

Mr. Corinblit: Mr. Taylor is stating what is in an agreement. We have the writing in the courtroom, and I certainly have no objection to offering it in evidence.

Mr. Mitchell: I will introduce the agreements but as a [2864] matter of fact clearance as he said in the agreements, the clearance that was in effect in 1938-39 season—I am trying to have him state

(Testimony of Alfred R. Taylor.)

what the clearance was so we will have it in one place.

The Court: Objection overruled.

The Witness: The clearance of the Paramount theatres gave them the right to have 7 days clearance over Inglewood, Huntington Park, Pasadena, Glendale and the surrounding towns of that type—San Fernando, if I recall correctly was one of those.

Q. (By Mr. Mitchell): What does that mean? Nobody in those towns can play sooner than 7 days?

A. No one could play the pictures in those towns until the Paramount theatres had completed their showing and 7 days had elapsed.

Q. And what was the clearance with respect to other areas?

A. It also provided they would have clearance of 14 days over towns such as Santa Monica, Culver City, Westwood and Beverly Hills and it also gave them a clearance of 21 days over the towns in what we call the urban core of Los Angeles, or the theatres, rather, in the urban core of Los Angeles.

Q. When you say "the urban core," I presume you mean the area inside of these suburban cities?

A. That is correct. [2865]

Mr. Mitchell: Now, so that the record will have the actual provisions which Mr. Taylor has described, at least with respect to the provisions of the franchises, I will offer in evidence the downtown theatre franchise, which is Defendant Paramount's Exhibit H-1 together with its extension

(Testimony of Alfred R. Taylor.)

which carries it to the date that Mr. Taylor specified as Defendant Paramount's Exhibit H-2, and the Hollywood-Paramount Theatre franchise which is Defendant's Exhibit H-3. I offer them in evidence.

The Court: In evidence.

The Clerk: Exhibits H-1, H-2 and H-3 in evidence.

(The documents referred to were marked Defendant Paramount's Exhibits H-1, H-2 and H-3, and received in evidence.)

Q. (By Mr. Mitchell): Now, did you and Marco Wolff and Harry Arthur—Harry Arthur is one of the men interested in Fanchon & Marco, Inc.?

A. He is the president of Fanchon & Marco.

Q. Did you and Mr. Wolff and Mr. Arthur have any discussions as to whether they would permit under their franchise, any theatres to play day and date with the Hollywood-Paramount and the downtown Paramount?

A. Yes. We had a number of discussions. It originally came up when they constructed the Baldwin Theatre, and at that time they wanted to play the Baldwin Theatre first run day and date with the Paramount Theatre-Hollywood and the Paramount [2866] Theatre Los Angeles.

At that time my superior was Mr. Smith, who is now retired——

Q. George Smith?

A. George Smith. And we had talked——

Q. When was this time? Can you fix about the date?

(Testimony of Alfred R. Taylor.)

A. Well, I am inclined to think it is the year 1949 or 1950.

Q. All right.

A. Around in that neighborhood. And they asked us for the right to play the Baldwin Theatre day and date with the other two theatres.

We agreed to consider it on the basis that they would modify the franchise to the point where we were entitled to play or consider other theatres in other areas on the same basis. And at that time they flatly stated that they would not agree to modify the franchise or anything else but for their own benefit. And there was no change ever made as far as the number of first runs was concerned.

Q. Now, the evidence shows, Mr. Taylor, that in 1947 Paramount licensed Golden Earrings to the Loyola, Chinese and Uptown and——

A. I believe it was either the Los Angeles or State.

Q. And that in 1950 Paramount licensed Captain China to those theatres, those being the only ones that Paramount, [2867] according to the evidence here, played in the Loyola. Can you tell the jury why you played Golden Earrings and Captain China in the Loyola at those times?

A. Well, at the time of Golden Earrings the two Paramount theatres found themselves in a congested booking condition. In other words, they had more pictures than they could absorb. The reason for it was there was a number of pictures they had played prior thereto for an extended period of time,

(Testimony of Alfred R. Taylor.)

and we had to do something to alleviate this booking problem in which they found themselves.

They finally agreed in an attempt to relieve this problem, to release us from our obligation to deliver them Golden Earrings.

As you can readily understand, they are not going to release the best pictures they have. I have heard pictures referred to here as "dogs" or "turkeys." I don't call them that.

Golden Earrings in my opinion was a "nervous A."

We have two types of pictures in our business—A and B, and this was what I called a nervous A.

It was a gypsy story with Marlene Dietrich and Ray Milland, who were no great shakes at the box office. They released the picture to us and we sold it to Fox and in selling it to Fox we took, as I recall correctly, a December 14 play date, which is the worst play time of the [2868] year. It is just prior to Christmas, and everybody is busy shopping and no one is going to the theatre. So, we sold it to Fox, which was the best we could do with the problem with which we were faced.

That is the story of Golden Earrings.

As far as Captain China is concerned, we had a dispute with Fanchon & Marco as to the relative value of the picture. I won't call it "a nervous A." I guess it would be a "nervous-nervous A." It is not quite a B, but it is one of those pictures if the hero goes out the door and slams it too hard, the wall will shake a little, but nevertheless it did have some merit.

(Testimony of Alfred R. Taylor.)

It was a sea story, and we felt it should be played at the top-half of a double bill and they felt it should be played at the bottom-half of a double bill, so they finally agreed to release us from our obligation.

So, one day Mr. Smith, who as I said, was my superior at that time, and myself went to lunch at the Fox West Coast commissary. That is a restaurant available for their employees and some outside people, and we met Mr. Zabel, who was then the buyer for Fox West Coast, and Mr. Smith said to him that we are looking for a home for Captain China and he said, "Well, I have a picture called Dakota Lil, which is somewhat the same problem, and I will offer you the Chinese and the Los Angeles and the Uptown and the Loyola on [2869] a split scale and give you equal billing on the advertising," and Mr. Smith said to him, "You have just bought a picture."

And the "equal billing" means that we will get the same amount of advertising space as the other picture. In other words, it assists us in the territory if our pictures are advertised and more important if they put Dakota Lil at the top and Captain China at the bottom in very small letters.

The split scale is we sell pictures on a sliding scale and what it means was that if the earnings were 30 per cent of the gross on the scale, Dakota Lil received 15 per cent of that sum and our picture Captain China received 15 per cent. In other words, the scale was split.

(Testimony of Alfred R. Taylor.)

Again, it was the best we could do with the problem we had and we sold them the way we did.

Q. Now, during the time that is involved in this lawsuit, from the opening of the Paradise Theatre until September, 1951, did you license any more Paramount pictures to the Loyola?

A. No, we did not.

Q. All went where?

A. To the two Paramount theatres. There was one exception, I believe. I believe it was during that time, and I may be mistaken, *Dark City*—it was a picture made by Hal Wallis. It was a quality picture and it was the first [2870] picture in which Charleton Heston appeared and we thought he had potentialities as a personality and they wanted to play it on the bottom half of a double bill, and we wanted them to play it on the top half of the double bill.

It played in the Orpheum Theatre downtown and I don't recall the theatre in Hollywood.

Q. Hawaii?

A. It might have been the Hawaii. I know there was one exception.

Q. All right. Now, during this period prior to September 1951, and prior to the construction of the Paradise Theatre, had you received any demands from the outlying theatres to play first run Los Angeles day and date with the two Paramount theatres?

A. We received a number of inquiries or demands.

(Testimony of Alfred R. Taylor.)

Q. Were they a little more than inquiries?

A. No. I guess that is a misstatement. It was a demand or a request, I guess.

Q. What other theatres that you recall?

A. Well, there was the Picwood Theatre which is in West Los Angeles, the Bards-Adams Theatre, the La Tijera Theatre, the Crown Theatre in Pasadena.

There may be one or two more. I don't recall. I believe the Southside — the Southside Theatre. There may have been one or two more. [2871]

Q. How about the Manchester?

A. No, I don't recall that the Manchester ever made a demand.

Q. How about the Baldwin?

A. I am sorry, yes, the Baldwin Theatre.

Q. How about the Rio or do you recall?

A. I would have to check my record on that. I don't recall about the Rio.

Q. In any event, did you give first run to any of these theatres? A. No, we did not.

Q. Why not?

A. We felt that we were bound by our franchise to deliver the two pictures, the pictures to the two Paramount theatres, that is Paramount Theatre-Los Angeles, and Paramount-Hollywood and therefore, we could not sell a day and date run to anyone else.

Q. All right. Now, these franchises were going to expire, one in September 1951 and one in March

(Testimony of Alfred R. Taylor.)

1952. Did you give any consideration during this period of time to what to do about that—to what to do with your pictures first run thereafter?

A. Yes. For some period prior to the expiration of the franchises, we were considering a different system of distribution in the Los Angeles area. The reason basically [2872] was that the grosses in the downtown area were dropping very rapidly and very steadily, and we just felt that we couldn't depend upon the downtown revenue as a major source of our income unless the pictures that seemed to do well in the downtown area were more of the action-type pictures—pictures of violence and mystery and so forth.

Around that time there was some consideration being given on Hollywood Boulevard to exclusive runs. In other words, we felt that some of the theatre owners there would and were to a minor extent, and would eventually, go into exclusive runs and that would result in our being relegated to secondary theatres, and that situation has come true.

The Chinese Theatre in Hollywood plays Fox pictures exclusively. The Paramount Theatre in Hollywood plays exclusive pictures. The Egyptian Theatre today is playing Oklahoma exclusively. The Warner Bros. for the last year and a half have been tied up with Cinerama, and I understand the Pantages, which is in my opinion the only "A" theatre left on Hollywood Boulevard has been sold Around the World in 80 Days, which is a process similar to Oklahoma, so they will be operating exclusively and

(Testimony of Alfred R. Taylor.)

we find ourselves in a position in Hollywood where we are relegated to "B" theatres. [2873-4]

In other words, two weeks ago we played *Partners*, a Martin and Lewis picture, in the Hollywood Theatre on Hollywood Boulevard, and grossed \$10,000. If we had played the picture in the Paramount Theatre, in my opinion, even though it was a part of a multiple day and date, we would have grossed at least \$20,000.

That is the difference between an A and B theatre.

Q. In 1952, when this franchise situation was expiring, did you visualize something like this coming to pass?

A. Yes. We visualized the Hollywood situation and we were concerned with the downtown grosses. Then there was this great amount of building out in the fringe areas of Los Angeles and we noticed, too, that prominent merchants such as Bullock's and Barker's and the Broadway, and so forth, were building stores out in the fringe areas in addition to their downtown stores.

In other words, we felt that they were attempting to bring a greater amount of their merchandise to a greater amount of their potential customers, so we came to more or less the same conclusion, considering the problem of downtown and the problem in Hollywood.

So we set up what we call the 7 multiple day and date runs. In other words, we attempted to surround the city of Los Angeles, that is, the fringe

(Testimony of Alfred R. Taylor.)

area, with theatres that would play day and date with Hollywood and downtown. We [2875] started off with seven and later we changed them to 10, which was the way in which we now distribute certain of our pictures in Los Angeles.

Q. At that particular period when you — well, let's fix a time. When did you start this multiple run thing?

A. Our multiple system started in July of 1952.

Q. What do you mean by a multiple system? Some people have talked about day and date Hollywood and Los Angeles being multiple. Some people have talked about this Fox Universal unit as being multiple, or the Chinese and Loyola unit as being multiple. What do you mean by multiple first run?

A. I don't consider downtown and Hollywood playing day and date to be multiple. That is just two theatres playing together.

I don't believe that the Universal unit to which they referred this morning as a multiple run. That again is a group of theatres.

We believe that our system of multiple day and dates is a method of surrounding given areas and giving the people in each of those areas an equal opportunity with downtown and Hollywood to see the pictures at the same time. That is what I consider to be a multiple system of day and dates.

Q. Which was the first company to institute this kind of a multiple run system of surrounding the city with multiple runs? [2876]

A. We originated the system.

(Testimony of Alfred R. Taylor.)

Q. This would be in July of 1952?

A. Yes. We put it into effect with the Greatest Show on Earth which, however, had previously played in the Orpheum Theatre downtown and in the Warner's Beverly as what we call merchandising engagements. It was a DeMille picture. It was a very important picture with a very high production cost, and we played it in those two theatres first.

Q. What do you mean by show casing?

A. Well, show casing is our effort to create a want-to-see attitude, I guess you would call it, on the part of the public, which is what we have right now with War and Peace.

As I said earlier, we have a six million dollar production cost. It is a Tolstoi story, written back in the 1800's. No one has ever attempted to make it before, and if you do want to make it right, it is going to cost a lot of money, because the story has such a great sweep to it. Naturally, we don't know if there is anyone in this court room that actually has any interest in seeing the picture, so it is our job to attempt to create a desire on the part of people to see the picture.

We believe that the best way to do it is through a show case.

Yesterday morning when I left the office, our advertising bill for this *engage* at the Paramount Hollywood advance [2877] and first week, as we call it, we lump the advance advertising and first

(Testimony of Alfred R. Taylor.)

week advertising into one figure, had passed \$40,000.

In our business, when you have a picture like *War and Peace*, you just can't sit back and say, "We have a picture which cost \$6,000,000 and everyone in the United States must come to see it." It just doesn't happen that way.

So we attempt as best we can with enthusiasm to create a desire on the part of these people to see this picture.

I know in this case—well, for example, we rented that billboard, that hand-painted billboard at Wilshire and Fairfax. It cost \$2,000 to paint the board and \$500 a week rent. Well, you may think it is a foolish expenditure. I am sure we don't know whether it is or not, but according to traffic surveys, there are many thousands of people going by that location every day and, therefore, we feel it is a good expenditure.

We employed the use of that blimp that flies around Los Angeles for one week in advance and during the first week of the picture, \$130 an hour for three hours a night, and a sign goes on and off saying *War and Peace*. We hope it is a good investment, but actually we don't know.

We believe that show casing *War and Peace* is the best way to present it to the public. [2878]

Q. How many theatres are you going to play *War and Peace* in first run?

A. Just in the Paramount Theatre, Hollywood. I might add the exhibitor is also doing his part. He

(Testimony of Alfred R. Taylor.)

is re-seating the theatre. He has a \$50,000 expense for the re-seating.

Q. With respect to your productions, how many of them are you now show casing and how many are you putting in these multiple runs to start with?

A. Well, to decide whether or not you should show case a picture or exhibit it in multiple runs depends upon the cost of the picture or the type of the picture or the problem with which you are faced. Every picture is a different problem. As I said, you don't know whether you are going to have a success or a failure.

In the last year we made 16 pictures, and 11 of the 16 pictures have been show cased. The other five we didn't think required that kind of treatment, so every picture is an individual problem.

Q. With respect to the first subsequent run, the 7 day run, and referring particularly to the Inglewood-Westchester area, in 1950 what was the problem down there which faced Paramount with respect to licensing pictures in that area?

A. Well, there had been a great deal of building of homes and stores in the Inglewood area, and the major problem, as we saw it, was that there was too many exhibitors had the [2879] same idea at the same time in constructing theatres.

I believe in the period of 18 months there was 8 theatres in what I call the Inglewood area.

Q. Those 8 theatres were what?

A. The Paradise, Centinela, La Tijera—the Fox

(Testimony of Alfred R. Taylor.)

had been closed for several years and reopened, re-modeled, reopened, refurbished.

Q. That is the old Granada, you mean?

A. I believe it was called the Granada. I don't know.

Q. It was rebuilt, wasn't it?

A. No. The four walls were there. The interior was entirely gutted and refurbished and rebuilt.

Q. All right.

A. The Southside and the Rio and the Imperial.

Q. Those were all new theatres?

A. Those were all new theatres.

Q. That is in the period of how long?

A. That is in the period of 18 months.

Q. Go ahead with the problem which confronted you.

A. It so happens that they were all substantial theatres, substantial properties. It wasn't that they were small, what we call store type theatres, where possibly the husband and wife operated the theatre with very few employees and therefore operated with a very low operating expense. They were all very fine theatres and a fine credit to the community. [2880] But they all came in so fast that we found or at least we felt we had a problem in distributing our pictures in Inglewood.

Of course, there is that monster in the living room, the television set, that was starting to come about at that time and not doing us any good.

Q. Well, what did you do about this problem

(Testimony of Alfred R. Taylor.)

that faced you down there? You tell me you had been licensing one 7 day run in that area. What did you then start to do about the problem?

A. Well, during that period of time we made a number of changes. We experimented several times. We were licensing one 7 day run and one 14 day run.

We had requests from the La Tijera Theatre to bid for the exhibition of our pictures on the 7 day availability and the 14 day availability, so we commenced bidding among all of the theatres in the Inglewood area.

Q. When was this, Mr. Taylor?

A. I will have to get out my notes, if you please. We made so many changes trying to solve this problem that I get a little——

Q. A memo to Mr. Taylor?

A. Yes, a memo to myself. In March of 1949 we arrived at the conclusion of taking two 7 day runs instead of one. Now, actually, that was a violation of the franchise that we had with Fanchon & Marco, in our opinion, but we felt it was a [2881] calculated risk and the situation was this, that with those added number of theatres in the area, there came a problem of quality product. When a theatre has a high operating expense, it has got to have quality product every week of the year if there is possibly that many pictures available. So we felt that by adding one run to that area, in other words, taking two runs instead of one, we would just license a quality picture to an additional theatre and

(Testimony of Alfred R. Taylor.)

help to relieve that problem, which we felt was in existence because of the increased number of theatres.

I sat down one day and totaled up, and of those theatres, those eight theatres, if you computed their seating capacity on the basis of two shows a night, which is the general practice of a theatre, plus three shows on Saturday and Sunday, and usually theatres have four shows on Saturday and Sunday, in a given week the seating capacity of the Inglewood area had increased by 165,000 seats. In other words, there was 165,000 seats more in Inglewood at the time the Paradise opened— [2882]

Q. Per week?

A. Yes. No, there was in 1945—now, if you want to deduct from that the seating capacity on the same basis of a few of the other smaller theatres that had closed, we arrived at the conclusion the additional seating capacity in Inglewood was 150,000 seats a week, which is a lot of seats, which is one of the reasons that we went to the two 7 day runs.

Then the next month—that is in April of 1949, we changed that and we went back to one 7 day run, but we added to 14 day runs.

We attempted to divide that 14 day run between theatres in the two areas. We had a hypothetical line which we were willing to grant clearance only to theatres on. One theatre could only have clearance over the theatre on their side of the line and not on the other side of the line.

(Testimony of Alfred R. Taylor.)

Then we in May—this is another month, we went—another month had gone by and we made another change.

We went back to one 7 day and one 14 day run.

Q. This was still in 1949?

A. This is all in 1949, and they are all a month apart.

Then in September of '49 we went back to one 7 day run—no, we continued on one 7 day run but we gave the Southside a clearance—a clear 7 day run and we had two 14 day runs. [2883]

And then in April of 1950 we changed to two 7 day and two 14 day runs, but we had no areas. In other words, we took those runs from the entire areas, and the exhibitors could request clearance over any theatres that they chose in the bids that they made. And it was then our determination to decide whether the bid that they made and the clearance that they requested was reasonable or unreasonable.

Q. What theatres did you at that time treat as being in your area?

A. It is what I call the Inglewood area. I would say the Paradise Theatre on the west—

Q. The Paradise Theatre wasn't there in April of 1950. You are talking about April?

A. No, that is right. The Loyola was there. However, they weren't interested.

Well, it would be the La Tijera. The La Tijera was then I would say on the west.

Q. Yes.

(Testimony of Alfred R. Taylor.)

A. And on the east was the Southside Theatre, and then all of the theatres intervening in between them.

Well, let me see now. That was without any areas. That went along for two months and then we changed again and we took two 7 day runs and two 14 day runs. In other words the number of runs were the same, but we created areas. We drew an imaginary line and the theatres on one side [2884] of the line were entitled to ask clearance over the theatres on their side and on the other side it was the same.

Q. This was a north and south line?

A. A north and south line, and that went on for a month.

Then in July of 1950 we inaugurated what we considered was the best system and continued that until we went into the multiple day and date. We continued the two 7 day runs and the two 14 day runs, but we created a circle system that we had. I would have to show it to you on the board. I have never seen it before and have never seen it since, but it was a system which we felt gave the theatres the proper opportunity to play and the clearance or the priority of runs was reasonable. And it was the best system that we were able to devise to solve this problem in Inglewood, and that is the history.

Q. When you devised this system, was that by reason of any deal, understanding, arrangement, conspiracy, combination or agreement with Loew's

(Testimony of Alfred R. Taylor.)

or Universal or Warners or Twentieth Century-Fox or Fox West Coast?

A. No. I most assuredly say it was not because it was strictly of our origin and I don't think anyone understood it but ourselves. We had to explain it very carefully to the exhibitors.

Mr. Mitchell: I would like to have him explain it [2885] because I am sure he can explain it so the jury can understand it, but I think it will take a few minutes, and I was wondering if your Honor wanted to take the recess at this time.

The Court: Yes. We are about to take another recess, ladies and gentlemen, and again it is my duty to admonish you that you are not to permit anyone to discuss this case with you. You are not to discuss this case with anybody and you are not to formulate or express an opinion as to the rights of the parties until the case has been finally submitted to you.

With that admonition we will now recess until 15 minutes after 3:00 o'clock.

(Short recess.) [2886]

The Court: Stipulated the jury is present in the box?

Mr. Corinblit: So stipulated.

Mr. Mitchell: Yes, your Honor.

The Court: You may proceed.

Q. (By Mr. Mitchell): Now, Mr. Taylor, I would like to have you describe your plan for the licensing of availabilities in Inglewood which went into effect last—you say when?

(Testimony of Alfred R. Taylor.)

A. In July 1950.

Q. And continued through 1950 and 1951.

A. Yes, and continued until July 1952.

Q. In describing that plan, let us describe it during the period when the Paradise was there so that the jury can understand how it operated with respect to the Paradise. You say you would like to illustrate it?

A. I believe I can give you a better picture if I do it on the blackboard.

Q. Will you do that?

(Witness going to blackboard.)

A. As I say, it is a bit confusing. It is a plan I never heard of before and I haven't heard of it since, but, as I said, the problem, as far as we felt about it, was with the increasing number of quality theatres in Inglewood, if we added an additional run in the area, it would help to relieve that problem, so I will do it the best way I can. [2887]

That P is for the Paradise and Lo for the Loyola.

Q. I think you better do it on the same compass basis as the map is. Oh, you are doing that. All right.

A. I am trying to. The La Tijera Theatre is up here, roughly, and the Centinela Drive-In Theatre is roughly a little ways from the La Tijera.

Then you have downtown Inglewood and you have the Ritz and the United Artists and the Fox.

Over here you have the Academy and you have the Fifth Avenue, and here you have the Century

(Testimony of Alfred R. Taylor.)

Drive-In and over here you have on the one boulevard the Imperial and you have the Rio and then you have the Southside.

Now, we just simply drew circles around certain of these theatres. We drew that circle which meant——

Q. For the record you will have to state what that circle encompasses.

A. We drew this circle around the Paradise, the Loyola, the Centinela Drive-In and the La Tijera Theatre, which meant if they sent us a bid for a picture, they were entitled to clearance or priority of run over the theatres in their own circle.

Q. When you say clearance, do you really mean clearance in the technical sense?

A. No, it is priority of run, because the next run could come in in 14 days. In other words, if the 7 day theatre [2888] played the picture 14 days, the next day after it closed the 14 day run could come in, so there was no clearance. It was priority of run.

So we drew in the circle covering that area.

Now, you see, the Centinela Drive-In and the La Tijera Theatres are in two circles actually which gave them clearance over or priority of run over the Ritz, the United Artists, the Fox, the Academy or the Fifth Avenue, and vice versa, as far as any of those theatres are concerned. They were entitled to the same priority of run.

Q. What about the theatres, the Academy and Fifth Avenue, the Ritz, United Artists and the Fox in respect of the Paradise? The Loyola is really

(Testimony of Alfred R. Taylor.)

not involved here. They were playing first run Los Angeles with Fox pictures. A. That's right.

Q. So what is the priority of run situation between the Paradise and those other theatres I named?

A. This circle meant if the picture was awarded to the Fifth Avenue, Academy or the Ritz or the United Artists, or to the Fox, they were not entitled to any priority of run over the Paradise, because the Paradise is in another circle.

Q. And the Paradise could play day and date with them?

A. That's right. I believe I have the next one here a little out of balance. The Imperial and Rio should be further under the Century, I believe, but the next circle is that way. [2889]

Q. You will have to describe what that circle encompasses.

A. This circle involved the Academy, the Fifth Avenue, the Century Drive-In, the Imperial and the Rio Theatres, and it means that any of those theatres that happen to be awarded a picture would have priority of run over the other theatres in their circle.

Q. Does that mean, then, that the Paradise could play day and date with those theatres if they got the second highest bid? A. Yes.

Q. If they put in the second high bid?

A. Yes, or if they were awarded the second bid they had priority of run.

The fourth circle was drawn this way, which

(Testimony of Alfred R. Taylor.)

meant it encompasses the Imperial, the Rio, and the Southside. Those theatres would have priority of run over each other if they happened to be the successful bidder.

Q. Then if the Southside happened to be the successful bidder and the Paradise was the second highest bidder, could he play day and date with the Southside?

A. They could both play day and date, which would mean that none of the other theatres could play on the same availability.

Q. So what theatres are there that the Southside cannot [2890] play day and date with if it would get the second highest bid?

A. The Southside cannot play day and date with the Rio or the Imperial.

Q. I didn't mean that. With what theatres is the Paradise prohibited from playing day and date with?

A. If the Paradise was awarded the picture, they could play day and date with any of the other theatres that happened to be awarded the picture, with the exception that it would not be awarded to the Centinela Drive-In or the La Tijera, because they were in the same circle with the Paradise.

Q. They couldn't play day and date with either the La Tijera and the Centinela, the Paradise couldn't? A. That is correct.

Q. But could play day and date with any other theatre in the Inglewood-Westchester area?

A. Yes, that's right.

(Testimony of Alfred R. Taylor.)

Q. All right, you may go back to the stand.

(Witness resuming stand.)

Q. Is that the way you licensed your pictures?

A. Yes. We felt that was the most feasible way that we could devise after the trial and error period that we went through. We commenced that, as I said, in July 1950 and we continued until July of 1952 when we started the multiple day and date plan.

Q. Now, I expect you will be asked and you might as [2891] well give your version now of this mysterious thing called substantial competition. What are your views about substantial competition in this area?

A. Well, all theatres are in competition with each other to some extent. We are not only in competition with the theatres, we are in competition with television, pro football, Motorama and hobby shows and so on. We are all competing for the entertainment dollar. So we in the movie business have to do the best we can to capture as much of that as we can.

The theatres themselves, I mean there is no set plan, as you can see from the way the theatres are constructed, nobody says that the theatres must be five miles apart or on a different street or the same street or so much population for each theatre and so forth. An exhibitor constructs a theatre with the thought that there is a potential in that area and he can operate profitably. [2892]

So the theatres spring up in all different loca-

(Testimony of Alfred R. Taylor.)

tions with the result that every problem that you have in determining availability or run is a separate and individual problem and you have to consider it as such.

So you analyze the situation as you see it and you make your decision and when you do decide, why, it is sometimes the result of discussions with the exhibitors or if you put a plan into effect that the exhibitors object to you discuss the matter with them and attempt to arrive at some other conclusion if his argument is justified.

This is a problem area for the reasons that I told you and, as far as I am concerned, they are all in competition with each other, as far as the Inglewood area is concerned.

Now, if you want to look at the Paradise, for example, which is on one end of the line, and the Southside which is on the other end of the line, personally I don't consider them to be in substantial competition standing alone.

In other words, we were selling two seven-day runs in the Inglewood area. As far as I am concerned, I would see nothing wrong with playing the Paradise and the Southside day and date. I don't consider them to be in substantial competition as such standing alone as I said, but this is an over-all problem. The problem is not the Southside and the Paradise. It is those theatres that are in between there.

So you have to attempt to solve the problem as best you [2893] can. When you try to determine

(Testimony of Alfred R. Taylor.)

substantial competition and you say a theatre is seven or eight miles apart—that is not a great distance in Los Angeles. I mean we are favored with good streets and wide highways and we have a lot of automobiles and you start to determine substantial competition not from one of the line to the other, but, rather, in the middle.

In other words, if the theatres are ten miles apart the problem arises in the middle of it—five miles, because the people that are living in the center or five miles from either theatre can decide to go either way and that is where your substantial competition starts.

In an attempt to determine whether there is substantial competition, as I said, standing alone, I just don't see that there is any substantial competition between the Paradise and the Southside. To me the Southside is a sort of a depressed area in a way. There has been a lot of housing development there, but there is a wide street and streetcar tracks and grass growing in between and it is not very well lighted. The stores are very small and they are not modern or new like they are in the Westchester area.

Does that answer the question?

The Court: Ignoring the Inglewood and Westchester area, what is your definition of substantial competition?

The Witness: Well, my definition of substantial competition [2894] is where two theatres are com-

(Testimony of Alfred R. Taylor.)

peting substantially for the same patronage. Now, you have no——

The Court: On what basis do you base your conclusion? Is it just competing for patronage?

The Witness: Yes. I mean you cannot give it to anyone in figures of per cent, whether it should be 45 per cent, 40 per cent or 30 per cent. Each situation is an individual problem in itself.

I would say, to get down to the least figure, that if two theatres were competing for patronage and one theatre could derive \$50 from the other theatre and that \$50 meant the difference in profit and loss to a theatre, to me that is substantial competition, because they are competing for that dollar to attempt to operate their theatres profitably.

Q. (By Mr. Mitchell): Now, standing alone you think the Southside, from your personal viewpoint, and the Paradise were not in substantial competition. What do you think the situation was as it existed with all of these theatres in between?

A. Well, actually I prefer or would have preferred at that time to have played my pictures in one theatre in the Inglewood area.

Q. Why is that?

A. Because I believe I could get a greater return and a better distribution by playing one theatre in the entire [2895] Inglewood area. But, as I said, we attempted to assist the problem by putting two runs in rather than one.

Q. If you played one run you think that theatre would draw its patronage from where?

(Testimony of Alfred R. Taylor.)

A. Well, I would say that if you played in one theatre it would draw from the entire area. It would get some measure or per cent from each of the areas.

Q. Well, if you played in two then what you are doing is cutting up the patronage to some extent?

A. Well, it is like cutting up an apple pie. If you cut it in half you have a larger portion than if you cut it in thirds or cut it in fourths.

Q. All right. Now, what do you think the competitive situation is with all of these theatres in this area, which theatres are substantially competitive with others, having a view that they are all there and demanding product?

A. Well, I believe there is no question that, starting with the Paradise on the West, that the Paradise is competitive with the Loyola and the Centinela, the La Tijera and the Ritz and the Fox and the United Artists and the Academy and the Fifth Avenue and the Century Drive-In. [2896]

Mr. Corinblit: Is that substantially competitive?

Mr. Mitchell: Yes.

The Witness: Yes, playing the same picture.

Q. (By Mr. Mitchell): You think they draw from each other's area?

A. Oh, definitely.

Q. When you are splitting up the draw?

A. That is correct.

Q. Well, now, you bid your pictures—you put them out on bid?

(Testimony of Alfred R. Taylor.)

A. Well, we felt in view of the requests of exhibitors that they desired to bid for the pictures that in our opinion that was the best way to solve the problem that we had. If you have one item and you have two or more people that are interested in the same item, in our opinion the best way to handle the matter is to let them make an offer.

Q. Well, supposing—by the way, which of these theatres is the strongest grosser—I mean, is there an obvious theatre that is the strongest grosser there?

A. Well, in my opinion the highest grossing picture—the highest grossing theatre in Inglewood is the Academy.

Q. Suppose the Academy wins one bid and the Southside wins another bid, why don't you license the third 7 day run to the Paradise?

A. For the reason you are cutting up the pie again. [2897] In the first place, as I said, we prefer to have one run but we added an extra run to relieve a problem.

Now, if you add another run you are just cutting down the pie again. And in addition to that, under the example you gave, if you played the Academy Theatre and the Southside, why don't you license the Paradise. So you license a third one to the Paradise. Well, the La Tijera has some rights, too, so he would come in and say, "I want to run the picture also," and the operator of the Centinela Drive-In could say, "Well, now, I appeal to a dif-

(Testimony of Alfred R. Taylor.)

ferent type of people than the conventional theatre so I want to run the picture.”

And some of the others could make the same statement. So, there is no end to it. You would have them all playing day and date and you would cut the pie up into such little bits there wouldn't be anything left for anyone.

To me that is not the successful way of distributing our pictures.

Successive runs have been a practice in our business for many, many years and no one has ever come up with a better solution to the distribution of pictures than a slow and steady succession of runs down the line.

Q. And you still do that?

A. We still do that and we believe in it unless someone can come up with a better idea, which no one has to this date. [2898]

Q. What other runs did you offer to the others subject to this plan of yours?

A. We offered two 7 day runs with the circle system. Then we had two 14 day runs and we used the same system.

Then after that the runs became sort of a pickup affair. They were less in number and we didn't have bidding because as you go down the line the amount of draw by a theatre of any great distance becomes less and less because the cream has been taken off by the theatres that have played earlier. So, as you go on down the line, the smaller theatre becomes a neighborhood theatre and draws generally from

(Testimony of Alfred R. Taylor.)

their own neighborhood or to a great extent. So, we never bid the 21 day run because there wasn't enough interest in it.

Q. But you did license 21 day runs?

A. Yes.

Q. There is one question I failed to ask you when we were talking about first runs, which I want to ask you before we get too far from it.

The Paradise did demand a first run Los Angeles of your company? A. Yes, it did.

Q. And why didn't you give it to them?

A. We refused it for the reason that we had the franchise in existence with the Paramount Theatre-Los Angeles and Paramount Theatre-Hollywood, which in our opinion, prohibited [2899] us from allowing anyone else to play day and date with the two theatres.

Q. You are referring to the clearance provision?

A. I am referring to the clearance provision of the franchise which gave them clearance over all of the other theatres in the metropolitan area of Los Angeles.

Q. Now, I would like to run through with you, Mr. Taylor, some of your negotiations with the Paradise Theatre with respect to subsequent runs, so that the jury may see how you handled it. And I am sure you can't pick this one theatre out of all of the hundreds in this area and remember what you did, but I will show you — these have been marked, but I will show you some notes which you made so that you may refresh your recollection.

(Testimony of Alfred R. Taylor.)

By the way, do you keep notes on your transactions with these theatres?

A. Yes. Sometimes I slip and sometimes I don't in the rush of things put in the recommendation—they are not always complete in every instance.

The right to approve a bid is solely in our office—that is, at the time of the Paradise opening my superior at that time was Mr. Smith and myself, and we had the sole right to approve the bids and when he retired, Mr. East replaced him and the right to approve the bid is still in the hands of Mr. East and myself—I mean, it is not subject to any [2900] control by New York.

Q. Now, these memoranda—do you keep similar memoranda with respect to other theatres?

A. Yes.

Q. This isn't something you did especially for the Paradise? A. Oh, no, no.

Q. And you say that you didn't necessarily keep a memoranda on every Paradise transaction?

A. No, but we try to. I notice this one that you have here goes back to December, a picture Copper Canyon, which I guess was back in 1950 some time. It says here "2305 to Dunn." 2305 is a form—just a form number, and Dunn——

Q. I don't want you to read the memorandum to the jury. What I would like to have you do is—this memorandum is marked for identification so there will be a record of what we are using here. It is Defendant Paramount's Exhibit D-8, and I would like to have you tell me after you examine that,

(Testimony of Alfred R. Taylor.)

what conversation you had with Mr. Schreiber with respect to the picture Copper Canyon on the 21 day availability and what you did with respect to the price of it. [2901]

Mr. Corinblit: Just a minute. Your Honor, we will object to this procedure. I think Mr. Mitchell knows the proper procedure in handling and using documents to refresh recollection. As I understand the procedure, you ask the witness a question and if he can testify of his own knowledge, he testifies that way. When he doesn't, you refresh his recollection with a document. You don't have the witness read the document and then read it into evidence.

Mr. Mitchell: I am not asking him to read it into evidence.

Mr. Corinblit: Then you ought not to ask him to read it before he says that he has got to read it before he can refresh his recollection. He should first say that he has no recollection. The document has got to be used in that way so that we can refer to it on cross examination.

Mr. Mitchell: I don't understand there is such a got to be, but whatever the judge says I have got to do, then I have got to do it. But obviously the man doesn't remember back in 1950 these detailed conversations about pictures.

The Court: What is the question?

Mr. Mitchell: The question is, will you examine the memorandum and tell me after refreshing your

(Testimony of Alfred R. Taylor.)

recollection what conversation you had with Mr. Schreiber about Copper Canyon.

The Court: Objection overruled. [2902]

The Witness: Yes, I recall it.

Q. (By Mr. Mitchell): Tell me in substance what you talked with him about on Copper Canyon on the 21 day availability?

A. Well, it goes back to a conversation prior to that in which Mr. Smith and I discussed with Mr. Schreiber his theatre, and he wasn't too happy with the results on the 7 and 14 days.

In the course of the conversation we made a suggestion to him as to the advisability of playing the theatre on the 21 day availability. It was our thought that——

Q. Which you expressed to him?

A. This is the conversation with Mr. Smith and myself and Mr. Schreiber.

Q. You told him it was your thought, you mean?

A. We told him we thought it was——

Mr. Corinblit: Can we have a time, counsel, approximately when with reference to the document.

The Witness: I can't tell you the time. I guess it was November, December, after he opened the theatre, and he opened the theatre in August. It was around the latter part of the year, to the best of my knowledge.

Q. (By Mr. Mitchell): In 1950?

A. In 1950.

(Testimony of Alfred R. Taylor.)

Q. So you told him you thought what? Go ahead. [2903]

A. We told him we thought he should try the theatre, it was a suggestion on our part, on the 21 day availability. Our thought was usually on the 7 day availability the second feature is rather a poor one, C or B second feature, and on the 14 day availability, generally speaking, the theatre that plays the picture also plays a poor or inferior second feature.

Our thought was that he had a very fine theatre and that if he could play on the 21 day availability and buy the two strongest pictures that were available, in other words, offer the people two A pictures, that with his seating capacity at his very fine theatre, it might work out very well.

That was a result of this sale of Copper Canyon to the Paradise Theatre on the 21 day availability. We sold him the picture for \$250 and we agreed that upon completion of the engagement we would meet with him again and review the price up or down, upward or downward, based on the result. In other words, the \$250 was a temporary figure and it would be reviewed up or down depending upon the result.

Q. All right. Now, if you will look at your memorandum of January 11th and refresh your recollection, will you tell us what you did with him with respect to the price of Copper Canyon?

Mr. Corinblit: Same objection, your Honor.

The Court: Same ruling.

(Testimony of Alfred R. Taylor.)

The Witness: Yes. We sold him the picture for 7 [2904] days for \$250. He played it 11 days.

We modified the contract so that the price for the 11 days would be the same as the 7 days. In other words, there was no increase in terms because he had played it for four extra days.

Q. (By Mr. Mitchell): Why did you do that?

A. Because in our discussion with Mr. Schreiber we came to the conclusion that the results were not too good.

Q. All right. Now, if you will look at your memorandum of January 16 with respect to Let's Dance and refresh your recollection, will you tell me what conversation you had with Mr. Schreiber about that picture?

Mr. Corinblit: Let me just state, your Honor, the formal objection for the record, and then I may have a continuing objection.

The Court: Same objection.

Mr. Corinblit: The form of the objection is there is no foundation laid, that there is no showing that the witness does not recall prior to use of the document.

The Court: Same objection and same ruling.

Mr. Corinblit: Thank you, sir. May I have a continuing objection?

The Court: You may have a continuing objection.

Mr. Corinblit: Thank you.

The Witness: Shortly after Copper Canyon, we

(Testimony of Alfred R. Taylor.)

had a [2905] picture called Let's Dance become available.

Q. (By Mr. Mitchell): On what availability?

A. On the 21 day availability, and we again sold it to Mr. Schreiber or, rather, at that time, I am sorry, I believe it was Mr. Lehman, we sold it to him for the same price as Copper Canyon, that is \$250, with the same understanding, that we would review the price up or down depending upon the results.

So later we discussed the matter and we reduced the price from \$250 to \$150.

Mr. Corinblit: May the record show that the witness is testifying from the documents which are placed in front of him?

Mr. Mitchell: That's right.

The Court: The record may show he is reading the document to refresh his recollection. He is testifying after his recollection has been refreshed.

Mr. Mitchell: That's right.

Q. The document you are looking at, so Mr. Corinblit can examine it later if he wants, is Paramount's Exhibit D-12 for identification.

A. Yes, but I also looked over to D-18, too.

Q. Excuse me. We will come to that in a moment.

A. All right.

Q. You examined with respect to Copper Canyon Defendant [2906] Paramount's Exhibit D-10 for identification.

Now, look at Defendant's Exhibit D-18 for iden-

(Testimony of Alfred R. Taylor.)

tification, and can you refresh your recollection with respect to the picture *Let's Dance*?

A. Yes. This is the letter to Arthur Dunn in our New York office——

Q. By you? A. From myself.

Q. Yes. I don't want you to read it.

A. I am not going to read it.

Q. I want you to refresh your recollection and tell me what you remember about this.

A. He was the head of the contract department, and this letter advises him we are submitting a modification——

Mr. Corinblit: Just a minute. Your Honor, I object to that.

The Court: You can't tell what the letter says. All you can do is refresh your recollection and testify from your recollection. Now, if it doesn't refresh your recollection and you don't remember, you can't testify.

The Witness: It does. I recall the circumstances.

The Court: Then you can testify what you recall.

The Witness: We reduced the film rental from \$250 to \$150 on the picture *Let's Dance* at the Paradise Theatre.

Q. (By Mr. Mitchell): Does that also refresh your recollection [2907] as to what his total gross was and whether it included a give-away?

A. Yes. He had a fur coat give-away on one night and he grossed \$1,034 in 7 days.

Q. For what period?

A. In 7 days his gross was \$1,034.

(Testimony of Alfred R. Taylor.)

Q. And you ultimately charged him \$150 for the picture? A. Yes.

Q. Now, if you will examine defendant Paramount's Exhibit D-15 for identification and refresh your recollection as to what conversation you may have had with Mr. Schreiber or Mr. Lehman with respect to the picture Mister Music on a 21 day availability.

A. This was a discussion we had with Mr. Schreiber and we also sold him Mister Music for \$250 with the same provision as Copper Canyon and Let's Dance insofar as a revision upward or downward in the price based on the final results.

Q. What did you finally do? If you will look at both Defendant's Exhibit D-15 and D-20, I think you will be able to refresh your recollection.

A. Yes. We reduced the price from \$250 to \$150 on Mister Music again because the results were not satisfactory.

Q. Mister Music was a Bing Crosby picture?

A. Yes.

Q. In reducing the price this way, are you trying to [2908] injure Mr. Schreiber in some way?

Mr. Corinblit: I object to that, your Honor, as being argumentative.

The Court: Overruled.

The Witness: Well, you don't sell pictures in this business or get along with your customers by injuring them. The success of our business is to keep our prints working every day in as many theatres as possible. We are nothing but salesmen.

(Testimony of Alfred R. Taylor.)

So you attempt to solve your problem specifically with an exhibitor, and this was an unusual problem in that Mr. Schreiber didn't know whether his theatre could operate on 21 days or not, and neither did we, so we more or less arrived at a temporary price for the picture.

Q. (By Mr. Mitchell): All right. Now, if you will examine your memorandum, which is marked Defendant Paramount's Exhibit D-22 for identification, and refresh your recollection, and tell me, if you remember, what you did with respect to the picture, the Paramount picture *Branded*?

A. The circumstances are the same in that we sold it to him for \$250 and later reduced the price to \$150.

Q. All right. Now, if you will examine your memorandum—these memoranda are all in your handwriting?

A. Yes, other than one which is typewritten.

Q. If you will examine your memorandum marked Defendant Paramount's Exhibit D-16 and refresh your recollection and [2909] tell us the circumstances surrounding the licensing of *Samson And Delilah*.

A. *Samson And Delilah*, that was an important picture that was put up for bid on the 7 day availability under the plan of two runs in the Inglewood area. The picture was awarded to the Paradise Theatre. The other run was awarded to the Century Drive-In.

I'm sorry. I am mistaken about that. It was

(Testimony of Alfred R. Taylor.)

an award made to the Century Drive-In and apparently we had unsatisfactory offers and we were willing to accept another run and we negotiated a deal for the Paradise Theatre for the other 7 day run. That is what happened.

Q. What do you mean by negotiated a deal?

A. Well, you send out the bid letters and you receive back from the exhibitors, if they are interested, an offer for the picture, and you either accept or reject the offers based upon whether or not you feel they are reasonable or unreasonable.

If you feel that the offers received are unreasonable, there are times when we send out second offers, ask for second offers, or there are times when we negotiate.

When the time arises that we negotiate, why, we contact all the exhibitors in the area and ask them if they are interested in negotiating for the picture. If one or more are, again we take their offers verbally a second time, and we [2910] accept the one which we feel is the better for our company.

Q. And this is before you negotiated with the Paradise and accepted its offer? A. Yes.

Q. And the Paradise played the picture on the 7 day availability? A. Yes.

Q. All right. Now, if you will examine your memorandum marked Defendant Paramount's Exhibit D-19 with respect to The Lemon Drop Kid on a 7 day availability, after doing so, tell we what you did with respect to that picture?

(Testimony of Alfred R. Taylor.)

A. We negotiated under bid for the picture and we accepted an offer of the Academy Theatre.

Q. May I interrupt you there? There has been a lot of talk here, Mr. Taylor, about bidding and negotiation, and there seems to be a differentiation between the two. Do you recognize a difference between what we might call formal bidding and negotiating?

A. Well, I was listening to Mr. Greenberg on this formal and informal bidding. We don't have that type of bidding. We have a regular bid form which we send out to the exhibitors and on this bid form it lists all the theatres that are involved in the area, and there is a deadline date on the bid, and they should return their offer to us by that time. When we receive the bids, we analyze them and either accept [2911] them or reject them.

If we reject all of the offers, why, we then negotiate because usually the time between the availability and the time that this occurs is very short, and you can't always send out a second set of bid letters, because many of the bookings in the theatres are made a very short time prior to play date, maybe two or three weeks, and the exhibitor wants to know what his status is on the picture. [2912]

So, we negotiate. In other words, I have the salesman call up all of the exhibitors that are involved and ask them if they desire to make an offer. Now, that is what I call "negotiation."

Q. All right. Now, in this instance you would book the picture Lemondrop Kid up for bid and

(Testimony of Alfred R. Taylor.)

by refreshing your recollection, can you tell me which theatre or theatres won the bid?

A. We put the picture up for bid and it was awarded to the Academy Theatre.

Q. For a one 7 day run?

A. Yes, a one 7 day run. We still have one 7 day run that we are willing to accept, so we negotiated with the Paradise and the Southside for the reason that under the circle system the Academy Theatre has clearance over the other theatres, or priority of run, so the Paradise—

Q. The only theatre, when the Academy wins, the only theatres that can play the second 7 day availability are the Paradise and the Southside?

A. That is right, because the Paradise—the Academy only has priority of run over the theatres within their own circle, and they had no clearance over the Paradise or no priority of run and they had no clearance or priority of run over the Southside, so that leaves us only the two theatres to negotiate with on this picture, because the Academy had [2913] already been awarded the one run.

Q. Did you negotiate with both of them?

A. We negotiated with both of them but in this case the Paradise was not interested and we sold the picture to the Southside.

Mr. Mitchell: Now, your Honor, I notice you are looking at the clock. I am not going to finish this right now and whenever you want to tell me to stop you may do so, but before we do stop, I would like to offer in evidence—I would like to

(Testimony of Alfred R. Taylor.)

mark this as the Paramount circle system, and offer it in evidence before we lose track of it.

The Court: It may be received in evidence.

The Clerk: Exhibit J. [2914]

* * * * *

Mr. Mitchell: Your Honor, I have a document here entitled Bidding for Paramount Pictures, 7 day Run, May 1, 1950, to September 18, 1951, which I would like to have marked defendant Paramount's Exhibit K for identification at this time.

The Court: It may be marked.

The Clerk: Paramount's K for identification.

(The exhibit referred to was marked as Defendant Paramount's Exhibit K for identification.)

ALFRED R. TAYLOR

the witness on the stand at the time of adjournment, having been heretofore duly sworn, was examined and testified further as follows:

Direct Examination—(Continued)

Q. (By Mr. Mitchell): Mr. Taylor, I will show you defendant Paramount's Exhibit K for identification and ask you whether you have checked this against your records and whether it correctly sets forth the pictures offered by Paramount for bid between May 1, 1950, and September 18, 1951, the theatres from which offers were requested, the theatres which submitted offers, and the theatres to which the pictures were awarded. A. Yes, it does.

Mr. Mitchell: I offer this document in evidence.

(Testimony of Alfred R. Taylor.)

Mr. Corinblit: Mr. Mitchell, before you do that, could we have this? The column, Theatres From Which Offers Requested, the requests you are referring to were those made pursuant to written—that is, the testimony is that these were letters of request for bid, is that correct?

Mr. Mitchell: Well, they were a form of request for bid, yes. They were in writing. [2923]

Mr. Corinblit: But they were in writing?

Mr. Mitchell: Yes, they were in writing.

Mr. Corinblit: And that is what you mean by the term theatres from which offers requested, correct?

Mr. Mitchell: Well, let's have the witness say.

The Witness: Yes.

Mr. Mitchell: I don't want to testify.

Q. Just tell us how you sent out the requests for offers. We are talking about what is on this exhibit.

A. We sent out requests for offer form to all those theatres indicated under that column.

Mr. Corinblit: All right.

The Witness: It is a regular form with typing on it.

Mr. Corinblit: And the column, Theatres Which Submitted Offers, again you are referring to written offers, is that correct?

The Witness: Yes.

Mr. Mitchell: Well, you examine the witness a while.

Mr. Corinblit: I don't want to examine him, but

(Testimony of Alfred R. Taylor.)

I will object to the exhibit unless you lay some kind of foundation with respect to the items in this exhibit.

Your Honor, I think plaintiff is within his right in requesting counsel to have the columns explained. I am [2924] not asking that he go through each item, because it is just a question of time.

Q. (By Mr. Mitchell): Just explain what you did with respect to these offers generally and then we will take them up one by one.

A. Well, I explained with reference to the column, Theatres From Which Offers Were Requested. That is a regular form of the company and there is certain typing that goes on the form which lists all these theatres.

The second column is Theatres Which Submitted Offers. These are the names of theatres that submitted an offer to us.

Q. In writing or orally? A. In writing.

Q. In writing? A. In writing. [2925]

Q. And then when you award the pictures, how do you go about doing that?

A. Then the final column is theatres to which the picture was awarded and indicated under this column is the award that we made under bid, but in some instances they were negotiated deals.

Mr. Corinblit: Thank you.

Q. (By Mr. Mitchell): All right. Now, your Honor, rather than read this all at once, which becomes very tedious, and also some of them we will want to deal with individually, if you will per-

(Testimony of Alfred R. Taylor.)

mit me, I will read in part and then so that the jury will understand what this paper is and then we will ask questions as we go along.

The Clerk: Your Honor, is the document in evidence? Mr. Mitchell made an offer but I didn't hear anything.

Mr. Mitchell: I offered it in evidence.

The Court: It is in evidence. I understood it was offered in evidence. It may be I never said "In evidence."

The Clerk: That is right. Paramount Exhibit K. May I put on the date, Mr. Mitchell, please.

Mr. Mitchell: Yes.

(The document heretofore marked Paramount's Exhibit K was received in evidence.)

Mr. Mitchell: Now this starts, ladies and gentlemen of the jury, with the picture No Man of Her Own. [2926]

Q. The date under that, Mr. Taylor, is the date on which you sent out your requests for offers?

A. Yes, May 3, 1950.

Q. All right. And this exhibit shows that requests for offers were sent to the Southside, La Tijera, Imperial, Rio, Ritz, Academy, Fifth Avenue, Fox and United Artists Theatres.

Q. At that time, in May, 1950, how many—these are offers for 7 day availabilities?

A. Yes, they are.

Q. And how many 7 day availabilities were you licensing in this area to this group of theatres at that time?

(Testimony of Alfred R. Taylor.)

A. I will have to look at my little list. As I said the other day we made so many changes—No Man of Her Own in May of 1950, we were taking two 7 day showings.

Q. All right. And this exhibit shows that you received offers from the La Tijera, Imperial, Fifth Avenue and United Artists? A. Yes.

Q. And that you licensed the picture to one theatre, the Fifth Avenue. Do you know why there was not an additional licensing of that picture? A. Offhand I do not.

Q. All right. The next picture is Eagle And The Hawk for which requests for offers were sent out May 23, 1950. [2927] They were sent to the same theatres, and the theatres which submitted offers were the Fox, the United Artists and the Imperial.

The bids were awarded to the United Artists and by negotiations to the Imperial? A. Correct.

Q. The next picture Beau Gest and Bengal Lancer—that was a program of two pictures?

A. It was a re-issue program.

Q. Yes. On June 23, 1950, the offers were sent out and the theatres to which offers were sent were those same theatres which I heretofore read plus the Paradise.

Now, at that time the Paradise was not open. Can you explain why you sent a request for offer to the Paradise?

A. Well, the Paradise was not open but they intended opening very shortly, so we feel it is ad-

(Testimony of Alfred R. Taylor.)

visible in an instance of that kind to send a bid letter out even though the picture may become available slightly before they opened up.

Q. At any rate, you did send the Paradise, among these other theatres, a request for offers?

A. Yes.

Q. And the only theatre which submitted an offer was the Ritz and the Ritz was awarded the bid.

The next picture is *Irma Goes West*, June 28, 1950. [2928] Requests for offers were sent out. I will read the names of the theatres that they were sent to and hereafter we will refer to them as being the same group so as to save time and tediousness.

The theatres to which requests for offers were sent as shown on this exhibit are the Paradise, Southside, La Tijera, Imperial, Rio, Ritz, Academy, Fifth Avenue, Fox and United Artists Theatre.

The theatres which submitted offers on *Irma Goes West* were the Academy and United Artists Theatres, to which the picture was awarded—the picture was awarded to the United Artists only. Again, do you have any explanation as to why a second 7 day run was not licensed at that time?

A. Yes, if I recall correctly, the United Artists in their bid requested clearance over the Academy to which, under our circle system, they were entitled to, and therefore the Academy would not be able to play the picture with the United Artists Theatre. Apparently no one else was interested in the picture. [2929]

(Testimony of Alfred R. Taylor.)

Mr. Mitchell: All right. The next picture is *Lawless*, for which requests for offers were sent out on July 11, 1950, to the same group of theatres. The theatres which submitted offers were La Tijera, Imperial, Ritz, Academy and United Artists, and the picture was awarded to United Artists and Imperial.

The next picture is *The Furies*, for which requests for offers were sent out on July 24, 1950, to the same group of theatres. The theatres which submitted offers were La Tijera, Imperial and Fox, and the picture was awarded to La Tijera and Imperial.

The next picture—let's go back to *The Furies* for a moment. I will state for the record—I could have the witness verify it, but I think it is unnecessary—the cut-off card which Mr. Corinblit introduced in evidence for Paramount shows that *The Furies* started playing on the 7 day availability on August 30, 1950.

The next picture is *Sunset Boulevard*, for which requests for offers were sent out on August 9, 1950, and the cut-off card shows that it actually commenced playing the 7 day availability on October 5, 1950, which was at a time when the Paradise Theatre was open.

The requests for offers were sent to the same group of theatres. The theatres which submitted bids were Paradise, Ritz, United Artists, Academy and the Southside. The theatres [2930] to which

(Testimony of Alfred R. Taylor.)

Sunset Boulevard was awarded on the bids were Paradise and Southside.

The next picture was *Fancy Pants*, for which requests for offers were sent out on September 27, 1950, and the cut-off card shows the picture played on October 25, 1950. Requests were sent out to the same theatres. Offers were submitted by Paradise, La Tijera, Ritz, United Artists, Academy, Imperial and Southside. The picture was awarded to La Tijera and Southside.

The next picture was *Union Station*, for which requests for offers were sent out on October 12, 1950, and which the cut-off card shows played November 8, 1950. Sent to the same theatres. The theatres which offered bids were Paradise, La Tijera, Fox, Ritz, Imperial, and the picture was awarded to La Tijera and Imperial.

The next picture was *Cassino to Korea*. October 12 was the date on which offers were sent. The picture played November 8, 1950. The theatres to which offers were sent are the same. The theatres which submitted offers were La Tijera and Imperial. The theatres to which the picture was awarded were La Tijera and Imperial.

Q. Now, on this exhibit it shows that those pictures were awarded, not as a result of this bid, but by negotiation. Can you explain how that occurred?

A. Yes. We were dissatisfied with the bids that had [2931] been submitted so we rejected the bids and negotiated with all concerned, because actually—this was a documentary subject. It was not a

(Testimony of Alfred R. Taylor.)

motion picture in that sense. It was a subject that had to do with the Korean war. There wasn't much interest evidenced in the picture.

Mr. Mitchell: Now, the next picture was Copper Canyon, on which requests for offers were sent out on November 13, 1950, and which actually played the 7 day availability on December 6, 1950, according to the cut-off card. The same theatres were sent requests for offers. The theatres which submitted offers were La Tijera, United Artists, Academy, Imperial and Southside, and the picture was awarded to Academy and Southside.

Q. Now, you will recall last Friday, Mr. Taylor, you referred to a memorandum of yours with respect to Copper Canyon and the 21 day availability. On the basis of that memorandum, can you tell us whether at the time Copper Canyon was on the market, you were then having discussions with Mr. Schreiber with respect to his theatre playing a 21 day availability on a trial basis?

A. Yes, we were.

Q. You actually did, as you said the other day, license Copper Canyon to him on a 21 day availability, making an adjustment on the rental finally?

A. That is correct [2932]

Q. Then the next picture is Tripoli, on which requests for offers were sent out on November 20, 1950. The picture actually played December 20, 1950. The requests for offers were sent to the same theatres. The theatres which submitted offers on this 7 day availability were Paradise, La Tijera,

(Testimony of Alfred R. Taylor.)

United Artists, Imperial and Southside, and the picture was awarded to United Artists and Imperial.

The next picture is Let's Dance, for which requests for offers were sent out on December 5, 1950. It actually played on January 14, 1951. Requests were sent out to the same theatres. The theatres which submitted offers were La Tijera, United Artists, Academy, Imperial and Southside. The picture was actually awarded to the Academy and by negotiations to the Southside.

In January, 1951, when this picture played, what kind of availability was Paradise playing at that time?

A. Well, they happened to play this picture on the 21 day availability. I don't recall whether Mr. Schreiber was continuing to operate on a 21 day availability, but he did play Let's Dance on that availability.

Q. You have testified heretofore, on Friday, with respect to the rental arrangements you made on that picture? A. Yes.

Mr. Mitchell: All right. The next picture is Mister Music, for which requests for offers on the 7 day availability [2933] were sent out December 5, 1950. It actually played, according to the cut-off card, January 24, 1951. Requests were sent to the same theatres. The theatres submitting offers, according to this exhibit, were La Tijera, Ritz, United Artists, Academy and Imperial, and the

(Testimony of Alfred R. Taylor.)

theatres to which the picture was awarded were the Academy, and to the Southside by negotiation.

Again, this is another picture which Friday you said was licensed to the Paradise on a 21 day availability. A. That's right. [2934]

Q. And on which you made a modification of the rental? A. Yes. We reduced the terms.

Q. Now, the next picture was Branded for which you offered on January 12, 1951—you requested offers on January 12, 1951, and it actually played February 7, 1951. Offers were sent to the same theatres.

The theatres which submitted offers were the La Tijera, Academy, Imperial, Southside and the picture was awarded to the Academy and Southside by negotiation.

Again from your testimony Friday, Branded was played by the Paradise on a 21 day availability?

A. Yes, it was.

Q. On which you reduced the rent?

A. Yes.

Q. Then the next picture is Dark City. Requests were sent out on January 12, 1951, to the same theatres and the theatres which submitted bids were the La Tijera, the Academy, Imperial and Southside, and the picture was awarded to the Academy and the Southside, both by negotiation.

The next picture—I take it where you have two negotiations there is a reason for that. Do you remember Dark City?

A. Yes. The reason would be that the bids that

(Testimony of Alfred R. Taylor.)

were received were rejected because they were unsatisfactory in our opinion, so we negotiated with all concerned. [2935]

Q. When you say "with all concerned," what do you mean by that?

A. Well, we contact all of the exhibitors in the area regardless of whether they submitted a bid originally or not, because things change in our business and where an exhibitor might not make a bid this week, because he cannot use the picture, because of changes of availabilities and whatnot, why, the following week he may be desirous of having the picture. So, it is always necessary in our opinion to solicit all of the theatres over again.

Q. Did that include the Southside—I mean the Paradise? A. Yes.

Q. The next picture is *At War With The Army*. Requests were sent out on February 9, 1951, and the picture actually played March 7, 1951. And this list to which requests were sent has additional theatres, and I will therefore read it so that I can again follow the same practice.

At War With The Army, according to this exhibit, requests were sent to the Paradise, Southside, La Tijera, Imperial, Rio, the Ritz, the Academy, the Fifth Avenue, the Fox, United Artists and the Centinela Drive-In and the Century Drive-In.

Can you explain the addition of the drive-ins on this offer of a 7 day availability?

A. Yes. It was originally our practice to keep the [2936] drive-in theatres back of the conventional

(Testimony of Alfred R. Taylor.)

theatres to some reasonable extent. I don't mean by that that the drive-ins played the last run in the area, but it was our custom to permit the conventional theatres on the early availabilities to play ahead of the drive-ins.

The drive-ins over a period of time had requested the right to compete for an earlier availability.

The position of the drive-ins was becoming different in our industry. The drive-ins started off many years ago and originally we wouldn't sell them our pictures because we felt they were a detriment to the business.

Originally they had a large speaker down in front of the screen and if you had your car down near the front of the screen, why, you would be literally blasted out of your car from the sound.

If you were back too far, why, you couldn't hear at all. They also had quite a light problem because of the length of the throw from their projection room to the screen and they, of necessity, had to have a very large screen with the result they were throwing so much on the film they were buckling the film in many instances and buckled film has to be discarded by us.

Through a period of time, however, they invented the in-car speaker which permits the speaker to be hooked on to the door of your car. [2937]

There was also an improvement in projection equipment. It became water cooled with the result they could throw more light on the film without injury to the film.

(Testimony of Alfred R. Taylor.)

The later drive-in theatres were built substantially and not in their original make-shift way, and they were daily becoming of increasing importance to our industry, and today they occupy a very important part of our business insofar as contribution to our total film rental is concerned.

So, we felt that the time had arrived that these drive-ins should be given the right to bid for the early availabilities and that was the reason they were added into this group. •

Q. All right. At War With The Army. Bids were sent in by the Centinela Drive-In, by the Ritz, United Artists, the Academy, Century Drive-In and the Southside and the bids were awarded to the Academy and the Southside.

The Great Missouri Raid. Requests for offers were sent out on February 21, 1951. The picture actually played commencing March 7, 1951, according to the cut-off cards.

Requests for offers were sent out to these same theatres, including the drive-ins and the theatres which submitted offers were the Centinela Drive-In, United Artists, Academy, Century Drive-In, Southside and the Ritz and the picture was awarded to the United Artists and the Century Drive-In.

The next picture was Quebec. Requests for offers were [2938] sent out on February 21, 1951. The cut-off cards show the picture started playing on 7 day availability on March 14, 1951.

Requests were sent to the same theatres including the drive-ins. The exhibit shows no bids were re-

(Testimony of Alfred R. Taylor.)

ceived and that the picture was negotiated to the La Tijera and the Imperial.

Again on that negotiation what theatres did you solicit for offers on the negotiation?

A. We solicited all of the theatres. The picture was a very inferior one.

Q. It was an inferior picture? A. Yes.

Q. Mollie is the next picture. Requests for offers were sent out on February 21, 1951, to these same theatres. The exhibit shows that you received no requests or offers and you didn't play the picture on that availability in the Inglewood-Westchester area.

A. This is really a bad one. This really a bad one.

Q. This was really a bad one?

A. It was terrible.

Q. The next picture September Affair. Requests for offers were sent out on March 9, 1951, and it actually played on the 7 day availability commencing April 4, 1951, according to the cut-off cards.

Requests were sent to the same group of theatres including [2939] the drive-ins. The theatres which submitted offers were the Academy, Century Drive-In, and the theatres—the theatres to which the picture was awarded was the Academy and to the Southside by negotiation.

The next picture is the Redhead And The Cowboy. Requests for offers being sent out on March 15, 1951. The picture actually started playing on

(Testimony of Alfred R. Taylor.)

the 7 day availability in Inglewood on April 4, 1951. Requests were sent to the same theatres. The only theatre submitting a bid was the Academy. The bid was awarded to the Academy and the second 7 day run negotiated to the Southside. [2940]

The next picture was Mating Season.

Q. Let's stop a moment on *The Redhead And The Cowboy*. There is an exhibit on that. Do you recall anything about a discussion with Mr. Lehman after that picture had actually been awarded, and negotiated?

A. Yes. If I recall correctly, there was some reason why he could not play the picture, and actually we awarded it to him, if I recall correctly.

Q. No. I think I better get a reference to that, perhaps, and refresh your recollection.

Mr. Corinblit: Could we have that comment about what he thinks stricken from the record?

Mr. Mitchell: Yes. I think that is incorrect. That is another picture we have to deal with.

The Witness: I know there was one picture of that type.

Q. (By Mr. Mitchell): Mr. Taylor, I will show you Plaintiff's Exhibit 3-B, a copy of it, which is in evidence, and ask you to refer to the date of the request on the *Redhead And The Cowboy*, and then after reading that letter, and Mr. Lehman referred to Plaintiff's Exhibit—a memorandum which was not introduced in evidence, dated March 27, and I think from those you may be able to refresh your

(Testimony of Alfred R. Taylor.)

recollection on what happened on *The Redhead And The Cowboy*.

Mr. Corinblit: Your Honor, may I have the same [2941] objection to the procedure Mr. Mitchell is using of having the witness read from documents?

The Court: I beg your pardon?

Mr. Corinblit: May I have the same objection that I had last Friday to the procedure of Mr. Mitchell?

The Court: Yes, you may have a continuing objection. Same ruling.

The Witness: Yes. I recall the circumstances.

Q. (By Mr. Mitchell): All right. Will you state what you recall about *The Redhead And The Cowboy*?

A. Mr. Lehman wrote me a letter asking for the right to play *Redhead And The Cowboy* in the *Paradise Theatre*. At that time the awards had already been made and I informed him that his request was received too late.

Mr. Mitchell: The next picture is *Mating Season*, requests for offer having been sent out on March 15, 1951, the picture actually having played on the 7 day availability, according to the cut-off card, on April 15, 1951, requests being sent out to the same theatres, including the drive-ins. The theatres which submitted bids were *Centinela Drive-In*, *Academy* and the *Century Drive-In*. The picture was awarded to the *Academy* and to the *Southside* by negotiation.

(Testimony of Alfred R. Taylor.)

The next picture is *Samson And Delilah*, requests for offer having been sent out March 20, 1951, and the picture actually commencing playing May 4, 1951. The theatres to which [2942] requests were sent were the same group, including the drive-ins. The theatres which submitted offers were Centinela Drive-In, the Fox, the Fifth Avenue—this exhibit shows the bid of the Fifth Avenue was withdrawn—and the Century Drive-In. The exhibit shows that the bid was awarded to the Century Drive-In and that the picture was licensed to the Paradise by negotiation.

Q. Now, you have a memorandum on that. If you will refresh your recollection from the memorandum, perhaps you can tell us how you went about your business of negotiating with the Paradise and why. Do you have it there before you?

A. I am trying to locate it.

Q. I think if you will turn those earlier ones over, Mr. Taylor, we will be needing those others. These you have used already.

A. I think we received bids from the Centinela Drive-In and the Fox and the Century Drive-In, and as you said, the Fifth Avenue submitted an offer but withdrew it, which they are privileged to do if they withdraw it prior to the award.

We awarded the picture to the Century Drive-In, which gave them clearance over the Fifth Avenue.

We were dissatisfied with the Fox and Centinela Drive-In offers and we negotiated with all concerned

(Testimony of Alfred R. Taylor.)

for the second run that was available, and we awarded it to the Paradise Theatre. [2943]

Mr. Mitchell: All right. Now, the next picture is the one we were discussing at the close of Friday's session, Lemon Drop Kid. Requests for offers were sent March 20, 1951. The picture actually played on the 7 day availability in the Inglewood area on May 30, 1951. Requests were sent to all the theatres, including the drive-ins and including the Paradise, according to this exhibit. The theatres which submitted offers, as shown on this exhibit, were United Artists, Academy and Century Drive-In, and the picture was awarded to the Academy, and the second 7 day run was awarded to the Southside by negotiation.

Q. Now, if you will look at your memorandum on Lemon Drop Kid, I think you can refresh your recollection and tell us what happened with respect to the Paradise.

A. The Paradise was not interested in the picture.

Q. That is, you actually negotiated with them?

A. Yes, we negotiated with everybody.

Q. But your memorandum refreshes your recollection on the fact that the Paradise was one that was not interested? A. That is correct.

Mr. Mitchell: All right. The next picture is Appointment With Danger. Requests for offers were sent out April 30, 1951. The picture actually commenced playing on the 7 day availability, according to the cut-off card, on June 20, 1951. These

(Testimony of Alfred R. Taylor.)

requests were sent to the same group of [2944] theatres. The theatres that submitted offers, according to Exhibit K, were Paradise, La Tijera, United Artists, Academy and Century Drive-In. The theatres which actually received the awards of the picture were the Academy and by negotiation the Southside.

Q. Now, you have a memorandum there with respect to Appointment With Danger. Perhaps you can tell us what happened there. I think there are three documents there. There is a memorandum, a letter, and a second memorandum, which will enable you to refresh your recollection. Do you have all three of those?

A. I find two of them.

Mr. Mitchell: If I could have Defendant Paramount's Exhibit E-22 for identification.

Q. Well, to save time here, I will furnish you with our copy. You might as well refresh your recollection from that as anything else. These documents are marked for identification Defendant Paramount's E-26, E-21 and—what is that one, Mr. Taylor? A. E-22.

Q. E-22. If you will examine those, I think you will be able to refresh your recollection.

A. We negotiated a deal with the Paradise Theatre, and the Paradise Theatre was awarded the picture, and then subsequently— [2945]

Q. You say "awarded." You mean awarded by a bid or awarded on negotiation?

A. On a negotiation.

(Testimony of Alfred R. Taylor.)

Q. All right.

A. And they found themselves unable to use it and they asked to be relieved of the obligation and we cancelled the contract and then we negotiated a deal with the Southside Theatre.

Q. Now, the next picture is Last Outpost. Requests for offers being sent out on May 28, 1951.

The picture having played on the 7 day availability in the Inglewood area on June 27, 1951, as shown on the cut-off card.

Requests for offers were sent to the same group of theatres including the Paradise and the drive-ins. The theatres which submitted offers were Centinela Drive-In, United Artists, Academy and Century Drive-In and Southside. And the theatres to which the picture was awarded was the Century Drive-In and by negotiation the Southside.

Q. Now, if you will refer to your memorandum, which is marked Defendant Paramount Exhibit 20 for identification—pardon me—exhibit—Paramount Exhibit 27 for identification and a handwritten memorandum which has not been marked but which I will show counsel and then show you. I think you can refresh your recollection as to what happened [2946] on Last Outpost.

The Clerk: You said Paramount Exhibit 27.

Mr. Mitchell: Exhibit E-27—Paramount Exhibit 27.

The Witness: This pertains to the 14 day availability.

(Testimony of Alfred R. Taylor.)

Mr. Corinblit: What are you referring to, Mr. Taylor?

Q. (By Mr. Mitchell): You are referring to Paramount Exhibit E-27? A. Yes.

Q. That refers to the 14 day availability?
A. Yes.

Q. Now, I will show you a picture—I will show you a pink interoffice communication which is in your handwriting, is it not? A. Yes.

Q. And I think by examining that, you can refresh your recollection on the 7 day availability?

A. Yes. From the offers we received we accepted the offer of the Century Drive-In and because we accepted that offer in our negotiations we were limited to the Southside or Rio or La Tijera Theatres plus the Paradise.

The only theatre that was interested in the picture as I mentioned, was the Paradise.

Mr. Corinblit: Your Honor, I move to strike that portion of the answer as non-responsive and being a conclusion of the witness. He states the only theatre that was interested [2947] was the Paradise. We can't meet that evidence. We have to have testimony that he picked up the telephone and said, "Will you buy the picture," and somebody said, "I won't buy," and I move to strike that portion of the answer upon those grounds.

The Court: Read the question.

(Question read.)

The Court: Now, read the answer.

(Answer read.)

(Testimony of Alfred R. Taylor.)

The Court: The answer may go out.

Mr. Mitchell: You are in error.

Mr. Reporter: I am not in error.

The Court: Ask the question again.

Q. (By Mr. Mitchell): Will you state, having refreshed your recollection—your entire answer has gone out. Now, I want you to state what happened with respect to the picture *Last Outpost*?

A. Well, we received five offers, one from the Centinela Drive-In, the United Artists, the Academy, the Century Drive-In and the Southside.

We accepted the offer of the Century Drive-In under our circle system. Certain of the theatres, of course, were limited because the Southside—because the Century Drive-In has priority of run over those theatres, so in our negotiations we contact all the theatres that can play the [2948] picture, which happened to be the Rio, the La Tijera, the Paradise and the Southside. We negotiated a deal with the Southside. The Paradise was not interested.

Mr. Mitchell: Now, when you say the Paradise was not interested, how do you reach that conclusion? What did you do that led you to that conclusion?

The Witness: I contact all of the exhibitors—

Mr. Corinblit: Just a minute.

The Court: Not what you do. Tell us what you did in this instance.

The Witness: I can't recall exactly what I did in this instance. I mean it is impossible for me to

(Testimony of Alfred R. Taylor.)

say. Sometimes, as I say, the salesman—I tell the salesman to do something for me, and possibly one of the salesmen contacted them in this instance.

Mr. Corinblit: I move to strike the answer.

The Court: The last part of the answer may go out.

Q. (By Mr. Mitchell): From your memorandum and your general practice, can you tell us what happened with respect to the Paradise?

A. Well, this memorandum is in my handwriting and it is a note to the sales manager to put through the contract which I awarded.

Mr. Corinblit: Your Honor, I move to strike that answer. It is a statement of what is in a memorandum. [2949]

The Court: It may go out.

The Witness: I am having difficulty.

Q. (By Mr. Mitchell): Just state, having refreshed your recollection from the memorandum, what happened with respect to this attempt to get the Paradise to buy the picture.

Mr. Corinblit: Your Honor,——

The Court: What is your recollection of this matter? You may refresh your recollection, if you can and after you have refreshed you recollection, tell us what your recollection is. Do you remember about this transaction?

The Witness: This I cannot say truthfully, your Honor, that I personally called the Paradise agent. Sometimes I did and sometimes I didn't.

I have a sales manager and three salesmen. They

(Testimony of Alfred R. Taylor.)

contact the exhibitors as well because they solicit them under normal circumstances.

A certain salesman in the office is responsible for the sales to the Paradise Theatre.

Now, as an actual instance of the Last Outpost I can't truthfully say whether I called him or whether I told the salesman—or the sales manager to contact him or the salesman to contact him, but I finally get a final report from everybody that contacts all of the theatres if I didn't do it personally and individually.

Q. (By Mr. Mitchell): And when you have gotten that—— [2950]

The Court: Just a minute, Mr. Mitchell.

Mr. Corinblit: It is not clear what the answer is meant to say. For the most part, it is a conclusion, your Honor.

Mr. Mitchell: He is telling what his practice is.

The Court: Denied. I want to get the record straight, Mr. Mitchell.

Now, when you go through this routine, then, do you make a memorandum of what you do?

A. The conclusions come to me whether I do it myself and already have them, or whether they come from the salesmen or the sales manager and a decision is made as to what we should do in the manner of disposing of the picture.

Q. (By Mr. Mitchell): Then you make a memorandum of what has happened?

A. Yes, because a contract has to be put through

(Testimony of Alfred R. Taylor.)

and that memorandum is a notice to put through the contract.

Q. All right. For the purpose of showing past recollection recorded, your Honor, under conventional rules of evidence, I want to read into evidence the matters recorded which indicate that there was a negotiation with the Paradise Theatre, and they were not interested.

Mr. Corinblit: Just a minute. This document in no way meets the requirements of any past recollection recorded.

It is not a recording of his past recollection in any way, shape or form. It is a document which is simply a [2951] conclusion included in a record, and therefore is not a recollection of his own and that is the sole vice of all of this testimony.

Mr. Taylor has not been testifying as to what he remembers. He has been testifying as to summaries and conclusions which he is now basing upon general practices.

I will object to the document upon that ground. I object to the document because it is hearsay and I object to the document because it is immaterial and irrelevant in this case.

The Court: The thing that bothers me, Mr. Mitchell, is that it is a memorandum written by the witness to somebody else in his office.

Mr. Mitchell: That is right.

The Court: And I ruled the other day I wasn't going to let those memorandums in.

Mr. Mitchell: This is on a different basis. I

(Testimony of Alfred R. Taylor.)

think perhaps your Honor's ruling was incorrect but I don't have to struggle with you on that. I don't have to struggle with you on that. This is a different principle of evidence.

I think perhaps I should ask one other question.

Q. Your memorandum, Mr. Taylor, was it true when you prepared it? A. Yes. [2952]

* * * * *

The Court: I will sustain the objection. You dig up the Supreme Court cases. Maybe the Supreme Court cases will make me change my mind, but it seems to me under the authorities you have presented you don't have a right to read the document. Now, if Mr. Corinblit wants to read the document, I think he can read it.

Mr. Mitchell: Then, if I may have the paper, your [2964] Honor, I will have it marked.

The Court: It may be marked for identification.

The Clerk: For Paramount?

Mr. Mitchell: Yes.

The Clerk: Paramount's Exhibit E-36 for identification.

(The exhibit referred to was marked as Defendant Paramount's Exhibit E-36 for identification.)

Q. (By Mr. Mitchell): I am going to show you a group of documents, Mr. Taylor, Defendant Paramount's Exhibit D-8 for identification, D-10, D-12, D-18, D-15, D-20, D-17, D-22, E-16, E-19, E-26 and E-36, and ask you if those were kept by you in the regular course of business.

(Testimony of Alfred R. Taylor.)

A. Yes, they were.

Q. Was it your regular course of business to keep papers of that kind and those papers in the regular operation of your business as a distributor of motion pictures? A. Yes.

Mr. Mitchell: I offer all those documents in evidence.

Mr. Corinblit: Objection, your Honor, on the ground the documents are hearsay, conclusion of the witness, immaterial, incompetent as far as this case is concerned, and that no foundation has been laid with respect to admissibility under the business record rule. [2965]

The Court: May I see some of those?

(Witness handing documents to court.)

The Court: Objection overruled. They may be admitted in evidence.

Mr. Mitchell: Could I take the pink one and I will read it to the jury.

The Clerk: I have to put them in evidence first. Just a minute.

Paramount's Exhibit D-8, D-10, D-12, D-15, D-17, D-18, D-20, D-22, E-16, E-19, E-26 and E-36.

(The exhibits referred to were received in evidence and marked as Paramount's Exhibits D-8, D-10, D-12, D-15, D-17, D-18, D-20, D-22, E-16, E-19, E-26 and E-36.)

Mr. Corinblit: May it please the court, E-36, which you have just admitted, is, I believe, subject to the same proposition on the ruling you just made.

(Testimony of Alfred R. Taylor.)

The Court: Let me see that.

Mr. Corinblit: Yes, sir. I think there are others, too.

The Court: Well, on the other exhibit, Mr. Corinblit, the witness said he had no independent recollection. He hasn't testified as far as this exhibit is concerned. If you want to take him on voir dire and establish the fact that he doesn't have any independent recollection, I may change my opinion.

Mr. Corinblit: All right, sir.

The Court: But so far there has been no objection [2966] raised along that line.

Mr. Corinblit: All right, sir. I would like to take the witness on voir dire for that purpose.

Voir Dire Examination

Q. (By Mr. Corinblit): Mr. Taylor, calling your attention to the picture *Outpost*, did you have some negotiations with anyone at the *Paradise Theatre*? A. Me, personally?

Q. Yes. A. I don't recall.

Q. Did you have some recollection, to your knowledge, were you present at any negotiation between anyone connected with *Paramount* and anyone connected at the *Paradise*? Were you personally present at such meeting?

A. I do not recall. [2967]

The Court: Where did you get the information to put down on that slip?

The Witness: Either I contacted the exhibitor myself and talked to him or other exhibitors that

(Testimony of Alfred R. Taylor.)

are listed there, or under my direction either the sales manager or the salesmen were instructed to contact the exhibitor and I finally get a report.

The Court: And they come back and tell you?

The Witness: They come back and tell me. After all, the best way to sell pictures is to contact all the exhibitors and get all the possible offers we possibly can.

Q. (By Mr. Corinblit): Do you know from whom—well, there is testimony in the record from whom offers were received—who were interested in the picture—withdraw that. Do you have any recollection of any negotiations with any theatres on the picture *The Outpost*? A. No.

Q. Do you have any knowledge, of your own personal knowledge, of negotiations by anyone connected with Paramount, that is, personal knowledge having been present at such negotiations?

A. I have no personal knowledge as to having one of the salesmen or sales manager present or contacting anyone by telephone.

Mr. Corinblit: Very well, your Honor, I call your Honor's [2968] attention to the sentence—

The Court: Let me see the document.

Mr. Corinblit: Yes. I am referring to the third line from the bottom.

The Court: I am going to sustain the objection to this document, Exhibit E-36 until after lunch. In the meantime you may find some Supreme Court cases to support your contention.

(Testimony of Alfred R. Taylor.)

Mr. Mitchell: I am offering it as a business record now, your Honor. Do you want cases on that?

The Court: Business records?

Mr. Mitchell: Sure.

Mr. Corinblit: Your Honor, we submitted a memorandum on the question of business records, an extensive memorandum.

The Court: Yes, I know you did and I read your memorandum.

Mr. Corinblit: And the document as a business record fails to meet the basic requirement of the foundation having been laid. Mr. Mitchell's only foundation, the only foundation he laid was the matter that it was kept regularly.

Now that under the cases is not sufficient. Mr. Mitchell must show with respect—in the first place, a business record cannot, does not avoid the objection of conclusions and hearsay. The precise and exactly the same ruling with respect to hearsay and conclusions is applicable to business records [2969] as is applicable to any other type of evidence and the memorandum cited cases to that effect, particularly a Second Circuit case decision by Judge Frank.

The business record rule was intended to apply to accounting details or books and records which record day-to-day figures and where there is no reason to falsify and there is an internal check. Here, particularly here, where litigation—where Mr. Taylor was going to attorneys and receiving letters from attorneys these memoranda——

(Testimony of Alfred R. Taylor.)

The Court: May I ask this witness a question?

Mr. Corinblit: Yes.

The Court: Was this document, Exhibit E-36, made in the regular course of your business?

The Witness: Yes, sir.

The Court: Was it your custom and practice to make a memorandum or record of the transactions after such a transaction as this?

The Witness: Yes, sir.

The Court: Did you do it all the time?

The Witness: I would say not in every instance.

The Court: In the majority of cases?

The Witness: In the great majority of instances.

The Court: Regardless of who you were dealing with?

The Witness: That is correct.

The Court: And was it made at the time of the act, the [2970] transaction?

The Witness: Yes. It might have been later in the day or the next day. Some of those are handwriting because I do them in an evening or possibly on a Saturday or Sunday.

Mr. Corinblit: Your Honor, I know your Honor is referring to the words of the statute, but if your Honor would—perhaps we might defer this entire matter until after lunch.

The Court: Well, you overlook the second paragraph of Section 1732. The second paragraph says:

“All other circumstances, the making of such writing or record including lack of personal knowledge by the entry maker may be shown to affect its

(Testimony of Alfred R. Taylor.)

weight but such circumstances shall not affect its admissibility.”

Mr. Corinblit: Yes, sir. Now, in the light of that statute, the cases that we have included in the memorandum, and it has been quite extensive—I had the opportunity to discuss the matter with you—show, and these are Supreme Court decisions, your Honor, and your Honor recalls the basic case. The basic case is a case——

The Court: I have had your memorandum and went over it and the objection is overruled. It is admitted into evidence.

The Clerk: Paramount Exhibit E-36 in evidence.

(The document referred to was marked Defendant Paramount’s Exhibit E-36 and received in evidence.) [2971]

The Court: Now, I might say to the jury that if this document is read to you, you must remember the last paragraph of the section that I have just read to the effect that if there is any conclusions in the writing or if the writing is made without the personal knowledge of the writer, that this information should be considered by you in judging its weight or the credence you should place upon the document. It is one of the things for you to consider.

Mr. Corinblit: Your Honor, Mr. Mitchell offered as a group that document and another group of documents. There is quite a large group here and for the record let me state I have the same objection to the other documents as I have to this one

(Testimony of Alfred R. Taylor.)

and I would perhaps, if I get an opportunity during the lunch hour, if I get an opportunity during the lunch hour to go over them I may be able to convince your Honor that some of these as well as the others don't meet the test called for by the cases.

The Court: Same objection, same ruling. If you want to make a motion to strike I will entertain it after you have looked up the authorities.

Direct Examination—(Continued)

Q. (By Mr. Mitchell): Now, we will try to get by with The Last Outpost with this memorandum. It reads: "Inter-communication"—with the Paramount trade-mark on it. "To Ralph." Who is Ralph? [2972]

A. Ralph Carmichael. He was the sales manager in our office at that time.

Q. "From," and I can't read your initials there. I guess it is yours. What is the initial there?

A. A.R.T.

Q. That is you? A. Yes.

Q. It is dated June 9th.

"Okay. Put through Outpost—7 day avail."

That stands for availability?

A. That stands for availability.

Q. "7 days, \$400. Southside. L.A."

And there is a set of digits "2305." What is that?

A. That is the number of the recommendation form.

(Testimony of Alfred R. Taylor.)

Q. "In Inglewood area on 7 day availability. Willing accept two runs from offers received. Offer of Century D.I." and that means Century Drive-In?

A. Century Drive-In.

Q. "Being separately submitted on Last Outpost. Due awarding picture to Century D.I. limited in negotiation for second showing in Southside or Rio or La Tijera or Paradise. Only theatre interested was Southside. Negotiated deal and Mr. Smith approved submission of attached deal for Southside." [2973]

* * * * *

Q. (By Mr. Mitchell): Now, Mr. Taylor, in preparing Defendant Paramount's Exhibit E-36, did you know at the time what the circumstances were with respect to the licensing of 7 day availability of Outpost?

Mr. Corinblit: Just a minute, your Honor. I object to the question as having been asked and answered. That is the document, your Honor, that he said he did not know a thing in the world about, didn't remember anything about, didn't know anything about.

The Court: That is not the question. The question is, did he know the situation that existed down in Inglewood.

Mr. Mitchell: At the time.

The Court: Objection overruled.

The Witness: Yes, I was fully acquainted with it.

Q. (By Mr. Mitchell): And when you wrote up

(Testimony of Alfred R. Taylor.)

this document, [2978] did you try to correctly and truthfully set forth what had happened?

Mr. Corinblit: Your Honor, I will object to that. It is immaterial what he tried to do. It has got to be based on his own personal knowledge, and it is not based on personal knowledge. I object to that.

The Court: When you wrote that document, it was true, was it? The things you put down there were true?

The Witness: Yes.

The Court: To the best of your knowledge.

The Witness: I handle all the bidding myself.

The Court: Objection overruled.

Mr. Mitchell: Now we can go to the next picture. The next picture, according to Defendant Paramount's Exhibit K, was a picture called Trio. According to this exhibit bids were offered or requests for offers were made on June 5, 1951. The picture actually played, according to the cut-off card, on July 18, 1951.

The requests for bids were sent to the following theatres, being the same group, but since it has been such a long time since they were stated, I will state them again, the Paradise, Southside, La Tijera, Imperial, Rio, Ritz, Academy, Fifth Avenue, Fox, United Artists, Centinela Drive-In and Century Drive-In. The theatres which submitted offers were the Ritz and Fifth Avenue, and the picture was awarded to one [2979] theatre, the Fifth Avenue.

Q. Can you tell me something about the picture

(Testimony of Alfred R. Taylor.)

and something about the reason why you only licensed one 7 day run on that picture?

A. This was a picture that actually came under the category of an art picture. It was three short stories by Somerset Maugham put together and there wasn't very much interest in the picture in commercial theatres. It was mainly a picture which was suitable only for art theatres.

Q. Why did you license only the Fifth Avenue?

A. Because the Fifth Avenue made an offer which granted them clearance over the Ritz, or priority of run over the Ritz, and there was no other offers.

Mr. Mitchell: The next picture is Dear Brat. Requests for offers were sent out on June 7, 1951, the picture actually playing, according to the cut-off card, on July 4, 1951. Requests were sent to the same group of theatres and there was one bid, Fifth Avenue. The picture was awarded to the Fifth Avenue.

Q. Was there any reason why you licensed only a single 7 day run on that picture?

A. The picture was not successful at the box office. It was a small B picture.

Mr. Mitchell: The next picture is Passage West, requests for offers being sent out, according to Exhibit K, [2980] on June 19, 1951, the picture actually playing, according to the cut-off card, on July 25, 1951. Requests for offers were sent to the same group of theatres. The theatres which submitted offers were Centinela Drive-In, which offer was

(Testimony of Alfred R. Taylor.)

withdrawn, according to Exhibit K, the Century Drive-in, which offer was also withdrawn, according to Exhibit K, and the Fifth Avenue. The theatre to which the picture was actually awarded was the La Tijera Theatre by negotiation.

Q. Can you explain why you licensed only one 7 day run on this picture?

A. It was a picture with a western background and was not very successful.

Mr. Mitchell: The next picture is the picture War Path, requests for offers being sent out on July 10, 1951, and the picture playing, according to the cut-off card, on August 15, 1951. Requests were sent to the same group of theatres, and the theatres which submitted offers, according to Exhibit K, were Centinela Drive-In, La Tijera, Century Drive-In and Fifth Avenue, and the picture was actually licensed to the Century Drive-In and the La Tijera.

Q. Now, do you have before you the defendant Paramount's Exhibit E-31 for identification? If you will look at that and refresh your recollection, if you have a recollection after looking at it, tell me what the circumstances were with respect to the licensing of the Century Drive-In and *the* [2981]

A. I recall the incident in this case. As far as the Paradise was concerned, the exhibitor was booked with outside product at that time.

Q. What does that mean, booked with outside product?

(Testimony of Alfred R. Taylor.)

A. When the picture War Path was available on a 7 day availability in Inglewood, the Paradise Theatre was already booked with product from another company during that week. [2982]

Q. Therefore, he couldn't use the picture?

A. He couldn't use the picture.

Q. All right. The next picture That Is My Boy, offered on July 10, 1951, which actually played the 7 day availability on September 5, 1951, offered to the same group of theatres.

The theatres which submitted offers according to Exhibit K were the Centinela Drive-In, La Tijera, Ritz, United Artists, Academy, Century Drive-In, and the picture was awarded to the Century Drive-In and the La Tijera.

The next picture was Peking Express offered on July 10, 1951. That actually played the 7 day availability according to Exhibit K on August 8, 1951.

It was offered to the same group of theatres. The theatres which submitted bids were Centinela Drive-In, Ritz and Fifth Avenue, and the theatres to which the picture was licensed were the Fifth Avenue and by negotiation to the Southside.

I have here an interoffice memorandum consisting of two sheets which I will ask be marked for identification and I will show it to counsel.

The Court: It may be marked for identification.

The Clerk: Paramount Exhibit E-37 for identification.

(The document referred to was marked Paramount Exhibit E-37, for identification.) [2983]

(Testimony of Alfred R. Taylor.)

Q. (By Mr. Mitchell): I will ask you to look at this interoffice communication and see whether you can refresh your recollection from that, and if you can tell me how you happened to negotiate the licensing of the picture to the Southside and what, if anything, you had to do with the Paradise?

A. Well, from the offers received, we accepted the offer of the Fifth Avenue which gave them priority of run over the theatres within their circle, with the exception of the Paradise and the Southside.

Q. When you say "gave them priority of run over the theatres within the circle," let us come back to the Fifth Avenue's circle. They had priority of run over what theatres?

A. The theatres within their own circle which in that case would be the Centinela Drive-In, the La Tijera Theatre, the Ritz Theatre, the United Artists Theatre, the Fox Theatre and the Academy Theatre; the Century Drive-In, the Imperial Theatre and the Rio Theatre.

Q. That is the Fifth Avenue picked up two circles on this priority of availability?

A. That is correct.

Q. Now, that leaves available for the second availability in the area what theatres?

A. The Paradise or the Loyola or the Southside.

Q. The Loyola was playing Fox pictures first run? [2984]

A. Yes.

Q. So practically it left the Paradise and the Southside?

A. Yes.

(Testimony of Alfred R. Taylor.)

Q. All right. Now, what did you do in order to get one of these theatres to buy a second 7 day availability?

Mr. Corinblit: This is of his own knowledge, if your Honor please.

The Witness: Well, it is in my own handwriting. The Paradise had Excuse My Dust and was not interested because he also had as a second feature Night Unto Morning, so the exhibitor was not interested in the picture and we negotiated a deal with the Southside.

Mr. Corinblit: Your Honor, I move to strike the answer as being a conclusion of the witness. Let the witness testify as of his own recollection that he requested of the Paradise to negotiate the picture.

The Court: Denied.

Q. (By Mr. Mitchell): I will just hang on to that so we can do all of those at once.

Now, the next picture is Here Comes the Groom—

The Court: Mr. Mitchell, before we go into Here Comes the Groom, it is 12:00 o'clock.

Mr. Mitchell: All right. We won't have the groom at this time, your Honor. * * * * * [2985]

Q. (By Mr. Mitchell): When we recessed at noon, Mr. Taylor, we had come on Defendant Paramount's Exhibit K to the picture Here Comes the Groom, which was offered on August 3, 1951, which actually played on October 3, 1951, on the 7 day availability. The offer, according to Exhibit K—or,

(Testimony of Alfred R. Taylor.)

rather, the request for offer was sent to Paradise, Southside, La Tijera, Imperial, Rio, Ritz, Academy, Fifth Avenue, Fox, United Artists, Centinela Drive-In and Century Drive-In, and the theatres which submitted offers were the Academy, United Artists, Century Drive-In and La Tijera. The theatres to which the picture was awarded were the Academy and the Paradise by negotiation. [2987]

Mr. Corinblit: Do you have the date on that, Mr. Mitchell, the date when it played?

Mr. Mitchell: I have the date—yes, I have the date when they played, which I read into the record, and I have the date of the award, also.

Mr. Corinblit: May I have the date of play?

Mr. Mitchell: I read that into the record. It is already in the record.

Mr. Corinblit: Could you give it to me, because I don't have *Here Comes the Groom* playing at the Paradise during that period.

Mr. Mitchell: No, it did not. It was awarded during the period, but it played, as I said, on October 3, 1951.

Mr. Corinblit: All right.

Q. (By Mr. Mitchell): Will you examine your memorandum on *Here Comes the Groom*, Defendant Paramount's Exhibit E-35 for identification, and after having done so, will you tell us whether that refreshes your recollection on how you went about negotiating with the Paradise and when?

A. Yes. When we accepted the offer of the Academy Theatre, under our circle system the other

(Testimony of Alfred R. Taylor.)

run could go either to the Paradise or the Southside.

Q. And no one else?

A. No one else. The Southside made us an offer [2988] and the Paradise made us an offer and we accepted the offer of the Paradise.

Q. Can you tell on or about the date that occurred?

A. Yes. I looked it up a few days ago. October 3 to 9, 1951, was the play date.

Q. But when you accepted the offer was when?

A. September 7, 1951.

Q. Will you give us the one week gross at the Academy and Paradise Theatres of *Here Comes the Groom*?

Mr. Corinblit: Your Honor, I call attention to the fact that the grosses were being—well, I will withdraw the objection. Go ahead.

The Witness: The Academy in seven days, October 3 to 9, 1951, grossed \$3,750. The Paradise, identically the same play time, October 3 to 9, 1951, grossed \$2,818.

Mr. Mitchell: I would like to have also in the record the national gross and the Los Angeles exchange area gross on that picture. We can stipulate to that. The national gross which I would like to have stipulated was \$2,465,000.

Mr. Corinblit: What picture?

Mr. Mitchell: *Here Comes The Groom*.

Mr. Corinblit: Oh, yes. Go ahead.

(Testimony of Alfred R. Taylor.)

Mr. Mitchell: And the Los Angeles exchange area, \$140,000. [2989]

Mr. Corinblit: Yes, I will stipulate to that. Now, will you stipulate with me, Mr. Mitchell, that on that date with that picture the Paradise played Rich, Young and Pretty, a Metro picture, on the 21 day availability?

Mr. Westbrook: Those are from what records?

Mr. Corinblit: Those are our own records.

Mr. Westbrook: You have never produced those before.

Mr. Corinblit: You never asked for them before, but Mr. Mitchell has gone outside, you understand, and I am going outside now.

Mr. Westbrook: Let's do it subject to correction.

Mr. Corinblit: All right. Thank you.

Mr. Mitchell: I would also like to have a stipulation on the national gross of the Warner Bros. picture Captain Hornblower, which played at the Academy and Southside Theatres in September 1951, prior to September 17, the national gross being \$2,382,000 and the Los Angeles exchange area gross being \$161,000. Will you stipulate to that subject to correction? I think Mr. Westbrook can show it to you right now, if you want to.

Mr. Corinblit: Yes, I will stipulate to that subject to correction. [2990]

Mr. Mitchell: Now, your Honor, in order to complete this file of memoranda and other papers in connection with these negotiations with the Paradise, I will now offer in evidence Defendant Para-

(Testimony of Alfred R. Taylor.)

mount Exhibit E-21, which is a letter from Mr. Taylor to Sydney Lehman, dated June 6, 1951, which Mr. Taylor examined in giving his testimony.

And Defendant's Exhibit E-22 for identification, a letter from Mr. Taylor to Harry L. Rackin, who is one of the Lehman organization, dated June 7, 1951, to which Mr. Taylor also referred.

These both refer to the picture Appointment With Danger.

The Court: They may be received in evidence.

The Clerk: Paramount's Exhibits E-21 and E-22 in evidence.

(The documents referred to were marked Defendant Paramount's Exhibits E-21 and E-22 and received in evidence.)

Mr. Mitchell: Now, I will also offer in evidence the following memoranda to which Mr. Taylor referred in his testimony, Defendant Paramount Exhibit E-31, with respect to the picture War Path; Defendant's Exhibit E-37 with respect to the picture Peking Express and Defendant's Exhibit E-35 with respect to Here Comes the Groom.

These are the same sort of memoranda as your Honor admitted just before lunch.

Mr. Corinblit: Your Honor, I would like to [2991] make a record here on voir dire, if I may.

The Court: You may.

Voir Dire Examination

Q. (By Mr. Corinblit): Mr. Taylor, I will show you the memorandum E-37 and ask you whether

(Testimony of Alfred R. Taylor.)

or not with respect to the picture Peking Express, whether you had any negotiations with the Paradise. A. Yes, sir; I did.

Q. You negotiated with the Paradise yourself?

A. Yes.

Q. And you have a recollection of that?

A. With Mr. Lehman.

Q. You negotiated with Mr. Lehman?

A. Yes.

Q. What did you say and what did Mr. Lehman say?

A. I can't recall what I said but I can recollect—I recollect when I read the memorandum—the reason that I could recollect our conversation was because he told me at the time of these two pictures that he had booked Excuse My Dust. It was a fine picture and not too successful in its early runs but it was a picture that should generate word-of-mouth advertising and I recall chiding him about this second feature. He had Night Unto Morning and tried to sell him on the idea my picture would be more valuable and that is why I happened to make a note of it. [2992]

Q. Prior to this memorandum had you had any instructions from counsel in this case to prepare memoranda of your conversations with Mr. Lehman? A. No.

Q. You were, however, referring all matters to counsel at that time?

A. Back in these years?

Q. Yes. A. Oh, no.

(Testimony of Alfred R. Taylor.)

Q. You were not?

A. Not to my knowledge.

Q. You weren't referring them to Mr. Carman over at O'Melveny & Myers at all?

A. No, no. Bidding is solely—the right of approval on bidding was solely with Mr. Smith at that time, who was then my superior, and myself.

Q. Had you prior to that time had any instructions from counsel with respect to the Paradise Theatre? A. No.

Q. None at all? A. No.

Q. You are sure of that?

A. I am positive. That is why I said yes.

Q. Now, you make the same answer—well, let us turn to the motion picture War Path. [2993]

Did you have any personal discussions with anyone connected with the Paradise Theatre?

A. Yes, sir, I talked to Mr. Lehman about it.

Q. And do you remember what you said and what he said?

A. No, I don't recall what he said or what I said, but I recall the circumstances because the picture happened to be made by a friend of mine, Nat Holt, whom I have known for many years.

Q. And your answer with respect to discussions with legal counsel that you just gave applies to this document as well? A. Yes, sir.

Q. And with respect to the document marked E-35, the picture here being Here Comes the Groom. Did you have any negotiations with the people connected with the Paradise directly?

(Testimony of Alfred R. Taylor.)

A. Yes.

Q. And do you remember what you said or what anyone connected with Paradise said?

A. I do not recall that all our memoranda in all our bidding situations are identically the same because I personally have charge of the bidding. And as I explained the right of approval of bidding is with us. Other contracts are subject to approval of the New York office. So I watch it very carefully so I cannot be criticized by the home office for making a mistake. [2994]

Mr. Mitchell: When you say—

Mr. Corinblit: Just a minute. Your Honor—well, did you have some further examination before I offer these?

Mr. Mitchell: Yes. I just want to clear up an answer.

Direct Examination—(Continued)

Q. (By Mr. Mitchell): You say on bidding the right of approval is with you. Does that or does that not include these negotiations that you enter into when you take one bid and then go negotiate with the Paradise for the second 7-day availability?

A. It includes all the bidding situations regardless of how the picture was finally negotiated, whether by bidding or negotiation.

Q. I want to ask two other questions. These memoranda which I have just described into the record and about which Mr. Corinblit has just asked you, were they kept in the regular course of your business? A. Yes.

(Testimony of Alfred R. Taylor.)

Q. And was it your custom in your business to keep memoranda of this kind?

A. Yes, particularly in the bidding situations because I was solely responsible.

Mr. Mitchell: I offer these documents in evidence.

Mr. Corinblit: The same objection, your Honor. [2995] No foundation has been laid with respect to the offer under the business record rule and to point that out here, the witness testified with respect to these matters and there is no necessity of putting them into evidence.

The Court: Objection overruled. They may be admitted in evidence.

The Clerk: Paramount Exhibit E-31, E-35 and E-37.

(The documents referred to were received in evidence and marked Defendant Paramount's Exhibits E-31, E-35 and E-37.)

Q. (By Mr. Mitchell): Now, this morning, Mr. Taylor, you spoke about the development of the drive-in theatres and how you started licensing them in the middle of this period of time, or offering them on bids on a 7-day availability in the Inglewood area.

Did the development of drive-ins have any significance in connection with your method of distribution after March 1952 when your franchise with Fanchon & Marco ran out?

A. Yes. It was one of the factors that we consid-

(Testimony of Alfred R. Taylor.)

ered when we commenced a system of multiple day and date. [2996]

Q. In what way?

A. Well, going back many years the drive-ins, as I endeavored to explain this morning, were inferior, and as years went by they became very substantial theatrical enterprises, and when a new drive-in would come into an area and it was the only drive-in in the area, why, then, he was really without any competition, so they didn't care where they played pictures, whether they were old or new. It made no difference to them as long as they bought them very cheap.

The drive-in theatre people in those early days took a very definite take it or leave it attitude. They offered you a very cheap film rental, which you could either accept or reject, because there is more pictures on the market than they could possibly use.

Q. What time are you talking about when this condition existed?

A. Oh, I am going back to 1944, 1945, around in there, the early part of the drive-ins.

Q. How long did this buyer's market for drive-ins exist?

A. Well, I don't know exactly, but after World War II, when building materials became available and other exhibitors realized the potential of drive-ins, why, there were more drive-ins built.

Now, as additional drive-ins are built, they become more competitive to each other, and as they

(Testimony of Alfred R. Taylor.)

[2997] became more competitive to each other, then they became very much aware as to where they played pictures, because the more competition they have, then they desire to play earlier runs so that they can gross a greater sum of money.

So the drive-ins not only were increasing or improving their plants, but they were asking for pictures on an earlier availability.

Q. That is why you went to a 7 day run, as you described this morning?

A. Yes. We offered them the opportunity to negotiate competitively with the other theatres for the 7 day availability.

Q. After your franchise ran out in March 1952, what significance did the drive-ins play in your multiple run plan?

A. They were one of the factors in determining that we would attempt a system of multiple runs. They weren't the only factor.

Q. What kind of factor were they? I am trying to have you describe why they had anything to do with your multiple run system.

A. The factor was in our opinion the thought that they could generate substantial grosses in drive-in theatres.

Q. Had anyone else tried what you call the multiple run system before you did, or shortly after March 1952? [2998]

A. No. We originated the system.

Q. There is evidence here that Universal played its pictures in four or five theatres prior to that,

(Testimony of Alfred R. Taylor.)

and that Twentieth Century-Fox played its pictures in four theatres. How do you differentiate that from what you call a multiple run system that you originated?

A. Well, I believe in the case of Universal, they were just putting a group of theatres together to try to get an outlet of some kind. I am not considering that multiple runs. That is just a group of theatres put together and operated as best they can.

In our case we put one multiple run in each of the surrounding areas of Los Angeles, which we thought was an intelligent approach to the problem.

Mr. Corinblit: Your Honor, I move to strike the answer beginning with the words "I believe," as a conclusion.

The Court: Here is an expert. He is entitled to give his opinion. Overruled.

Q. (By Mr. Mitchell): How do you differentiate what you call multiple runs from the group of theatres that Fox was using to play its own pictures?

A. Fox, as I recall, had four theatres, and they just put them together and were exhibiting their own pictures in their four theatres.

Q. What is the difference between that and the [2999] kind of multiple run system you say Paramount invented?

A. Again we have attempted with some intelligence to put one multiple run in each of the surrounding areas of Los Angeles, giving all of the

(Testimony of Alfred R. Taylor.)

exhibitors in that area an equal opportunity to play the picture.

Q. All right. Now, in connection with that multiple run, have you found it advisable to add to it the feature of a show case exclusive run?

A. Well, we never intended when we created the multiple runs to eliminate the show casing of motion pictures. Each motion picture has to be considered individually and separately on its own merits. To us there were certain pictures made that warranted show cases and certain pictures that warranted exhibition in multiple runs, so we determined what we would do as each picture became available and we screened it and determined its potential.

Q. You testified that 11 out of your last 16 pictures have been show cased. Will you give the jury the names of the pictures, of those 16 pictures the 11 you have show cased and the five that you have run without show casing?

A. Well, I added one more to the multiple run this morning, because at the time that I originally computed this, I didn't have *Partners* in there, which is a Martin and Lewis picture. So it now totals to 17 pictures.

The reason I chose 17, that is the number of [3000] pictures which our company released during this last season, we exhibited in the multiple runs *Girl Rush*, *Ulysses*, *Lucy Gallant*, *Artists and Models*, *Leather Saint*, and *Partners*.

(Testimony of Alfred R. Taylor.)

Q. What kind of pictures are those, if you can characterize them or categorize them?

A. Well, two of the pictures are Martin and Lewis pictures. We feel that Martin and Lewis have their own fans and their format is basically the same. Martin sings and Lewis makes funny faces. Basically, they are the same story with just a little change here and there.

As I say, they have their fans and we don't feel anything could be added by show casing the pictures, because there isn't going to be any great amount of word of mouth advertising, because their fans are already established.

Girl Rush was a very expensive picture with Rosalind Russell. It was a disappointment to us. It was not what we expected for the money that we had in it. We did not feel there would be any favorable word of mouth advertising, so we might as well put it in 10 theatres in a hurry and hope to fool somebody that would be attracted by the advertising and come to see the picture.

Ulysses was a classic. It was with Kirk Douglass. It was made in Italy and it was a very fine picture of its type, a lot of action. I don't think it was a picture that would generate any word of mouth advertising. [3001]

Lucy Gallant was an oil well story, had considerable action in it, with Jane Wyman and Charlton Heston. I don't think it would create any word of mouth advertising.

Leather Saint was a picture with John Derek

(Testimony of Alfred R. Taylor.)

and Caesar Romero and Paul Douglas. It was an attempt to make another *Going My Way*. It was a similar type story. It was just a picture made at a very reasonable cost. We didn't think there would be any word of mouth advertising generated because of the picture.

In exclusive runs, we ran exclusively *To Catch a Thief*, *Trouble With Harry*, *Rose Tattoo*, *Court Jester*, *Scarlet Hour*, *Birds and the Bees*, *The Man Who Knew Too Much*, *That Certain Feeling*, and *Proud and Profane*.

In addition to that, we took two runs on two pictures, *Desperate Hours* and *Anything Goes*.

Those were all show cased in the last season.

Q. When you say two runs—well, let's start at the beginning of the first show case picture. Do you remember where these pictures were show cased?

A. Yes. *To Catch a Thief* played in the Paramount Theatre in Hollywood.

Desperate Hours was one we had two runs on. We were experimenting with the thought of going back to a downtown run and a run on Wilshire Boulevard. We tried it on *Desperate Hours*. [3002]

Q. What theatres did you play it in?

A. The Warner Bros. Theatre in Beverly Hills and the Orpheum Theatre downtown.

Trouble With Harry played in the Fine Arts Theatre in Beverly Hills. It was strictly an offbeat picture, and it is a small house with a small operating expense, and we felt we could generate some

(Testimony of Alfred R. Taylor.)

word of mouth advertising in that theatre with that particular picture.

Rose Tattoo played in the Warner's Beverly Theatre in Beverly Hills.

Court Jester played in the Paramount Theatre in Hollywood.

Anything Goes——

Q. I think as you go along it might reveal to the jury what you were trying to do with the pictures if you would start back there and tell us—you told us about the one offbeat picture. Tell us a little bit about the other pictures.

A. Well, *To Catch a Thief* was made by Alfred Hitchcock. It has Cary Grant and Grace Kelly in it. At least in my opinion there are two producers or directors in Hollywood whose name means something at the box office. One is De Mille and the other is Hitchcock. His pictures follow a certain pattern, story of suspense. They are well made. They are expensive pictures. We felt by exhibiting them at an exclusive run we would generate [3003] some word of mouth advertising and therefore it would help all the exhibitors and ourselves as well on down the line.

Desperate Hours was a gangster picture. It was a story of three escaped convicts who holed themselves up into a family home, modest American family, and take over the running of the house.

It was rather an offbeat story and another company had made a very similar picture, and I believe it was called *Night Holds Terror*, released it

(Testimony of Alfred R. Taylor.)

ahead of us, and it was actually the same basic plot. I believe it was based on an actual happening in Lancaster, California. They got quite a bit of publicity.

Q. Yours was a play in New York?

A. Ours was originally a novel and then a play and then a motion picture.

We also at that time, our home office, at least, had made a survey and they came to the conclusion that if you could spend additional money advertising in New York City, Chicago, Washington, D. C., Dallas and Los Angeles, that that advertising penetration would splash over into all other parts of the United States and that it would assist everybody in the United States, so we spent advance and first week here in Los Angeles \$34,000 advertising the picture.

Now, unfortunately, it happened to come along, [3004] I guess, in the wrong cycle. People didn't like the picture at that time, or no one came in any event, and the picture was a failure. Some day I think the picture will do business. [3005]

Trouble With Harry. I told you about that picture.

Rose Tattoo. We thought that we had an opportunity of winning the Academy Award and under the Academy rulings you must play a picture publicly in Los Angeles at least 7 days before January 1st. So, we opened the picture around the Christmas period in order to qualify for the Academy Awards.

(Testimony of Alfred R. Taylor.)

Then we continued to play it in the Warner-Beverly Theatre hopeful that the people that had the right to vote for the winner of the awards, why, they would go to the theatre and see the picture and vote favorably for our picture.

We did win some of the awards.

We then removed the picture out of the Warner-Beverly at the night of the Academy Awards and then released it into other theatres so they could take advantage of the publicity because of the awards we did win.

Court Jester. That was a Danny Kaye picture and he is not too successful at the box office. This was a fine picture. It cost a lot of money. We felt we had a good story. However, there is a problem with costume pictures from time to time. They are not usually as acceptable as other types of pictures and we felt if we ran the picture in one theatre we would create some favorable publicity for ourselves. [3006]

Anything Goes was a picture that we tried two runs on. We played it in the Pantages Theatre in Hollywood and the Orpheum Theatre downtown. It was again a very expensive picture with Bing Crosby and Donald O'Connor and Mitzi Gaynor. We had Cole Porter music. It was in Technicolor and again we felt that we would assist ourselves by playing it in two theatres.

Do you want me to continue through the rest of them?

(Testimony of Alfred R. Taylor.)

Q. Yes, continue through the rest of them.

A. Scarlet Hour. Well, Scarlet Hour was a little different. That was a picture with no one in it.

There has been a cry in our business for the last several years that what we need is new faces. So, the company came to the conclusion that if we had some people in whom they had the confidence or felt they had possibilities for the future, that if they could get a good story and an important director and put those people in a picture by themselves, that we would assist those people a lot more than we would if we put them in with a Martin and Lewis picture or a Bing Crosby picture where those people would only have a limited opportunity.

So, Scarlet Hour was the result of that thinking. No one was very anxious to play it, even though many of the exhibitors or the ones that have been crying for new faces for many years, but because there is no one to advertise it is a difficult [3007] picture to put over. So, we tried it in the Pantages Theatre, Hollywood, introducing the new faces.

We spent \$7500 advertising advance and first week and the theatre took in \$2400. So, that was an unsuccessful venture.

Birds and the Bees was a picture with George Gobel. We weren't sure how much Gobel meant at the box office. It was our opinion that it was an excellent picture. It was made many years before called The Lady Eve. At that time it was very successful and so we decided to put it in the Para-

(Testimony of Alfred R. Taylor.)

mount Theatre - Hollywood to introduce George Gobel to the fans of the United States.

That shows you how you can sometimes gain the wrong impression. We thought that George Gobel was a big town comedian and not a small town comedian. The amazing thing about this picture is that the smaller the town it goes into, the more business that it does. It was exactly the result—the results were exactly the reverse as we thought they were going to be.

The Man Who Knew Too Much was the second Hitchcock picture and the story is the same as To Catch a Thief, only cast was James Stewart and Doris Day.

That Certain Feeling is a Bob Hope picture. Up to a year ago Hope had three or four years of bad pictures and he was slipping very badly at the [3008] box office, and we finally made a picture called The Seven Little Foys, which happened to be an excellent picture. So we felt in order to assist Hope that we should play The Seven Little Foys in one theatre, hopeful that the word of mouth advertising would help us. It proved to be very successful.

So we come along this year with another Hope picture which in my opinion was a better picture than The Seven Little Foys but it hasn't as an attractive title. We weren't sure whether Hope had recovered yet and so we decided to put it in one theatre and tried to be sure we could put Hope back where he was before.

(Testimony of Alfred R. Taylor.)

Q. What theatre did you put it in?

A. Paramount Theatre in Hollywood.

The last picture, *The Proud and Profane* is now playing at the Four Star Theatre. It is a war picture with William Holden. It was made by Perlberg and Seaton. They are very important producers with us. They made *The Country Girl*, *Bridges of Toko-Ri* and we felt we would be better served by playing *The Proud and Profane* in one theatre.

Q. Now, you have described in 1950 and 1951 how you licensed your first subsequent run, the so-called 7 day availability.

What are the factors that you considered in determining in what areas you would license your so-called first subsequent run, the 7 day availability? [3009]

A. Well, the 7 day availability that generally existed in 1950-51, was in existence when I came here, but I analyzed it, which would be my job, when I came here.

And it is true here as of every place else throughout the United States that I have ever been assigned to, that a succession of runs is a success or one of the successes of our business—that you start in an area such as, say as an example, downtown Los Angeles, and then you go out to the outer edge of that area.

In other words, to further points removed from the focal point, as I call it, which would be downtown Los Angeles, and you place the next run or

(Testimony of Alfred R. Taylor.)

availability, which would be 7 days, in the outlying areas.

Then you slowly week by week come in closer to the focal point.

Q. How do you determine which of the outlying areas to select?

A. Well, you do that by your individual opinion as to where the run should be.

Pasadena is a substantial community. Glendale is a substantial community. Inglewood and so forth and it was felt that a 7 day run would be reasonable in those situations—the most important sub-communities to Los Angeles.

Q. Did you attempt to provide a 7 day run for every theatre which happens not to be in [3010] substantial competition with some other theatre?

Mr. Corinblit: Object to that as leading and suggestive.

The Court: Objection overruled.

Mr. Mitchell: Could I have the question again, please.

(Question read.)

The Witness: No, because in our opinion in the Inglewood area one 7 day run is the proper way to distribute our pictures. We believe that one 7 day run, for example, in Pasadena, is the proper way to distribute our pictures after it has completed its Los Angeles engagement, because those theatres in those areas are important, too, even though they may be subsequent to the downtown or Hollywood theatres.

(Testimony of Alfred R. Taylor.)

They have their advertising penetration to the other areas surrounding the area in which the picture is playing. In other words, we believe a single run in Inglewood has its influence over Redondo Beach and Hermosa Beach and Torrance and Gardena—those little, smaller communities surrounding the Inglewood area and if the advertising is favorable, why, it will assist the exhibitors that continue to play thereafter because in addition to the fact that everybody can't come to the theatre in one given week, why, there is the matter of the admission prices and as the picture goes on down the admission prices go down, too, and we hope to play to every segment of the population. [3011]

Q. You say you thought that it was a proper way to license the Inglewood area—you say you thought that the proper way to have licensed the Inglewood area was with one run. I think you explained why you made two runs available. I think you should briefly tell us so now in order to relate it to what you are saying—why did you give two runs to that area—why did you make two runs available?

A. We made an exception in Inglewood because of the number of theatres that had come into being in a limited period of time, and that they were all substantial theatres with substantial operating expenses and in order to operate theatres properly with substantial operating costs, you have to have quality motion pictures. So with all of those theatres that had come into being, in our opinion, if

(Testimony of Alfred R. Taylor.)

we could add one run to the Inglewood area we would assist in solving that problem which we felt was existing.

Q. Why didn't you give another run to the Paradise like they wanted?

A. We didn't give another run to the Paradise. We permitted the Paradise to make an offer from all of the other theatres in that—all of the theatres in the area were entitled to make an offer for one of the two runs.

Mr. Corinblit: I object to that and move to strike the answer. It is not responsive. Mr. Taylor was asked why he didn't give the Paradise another [3012] run, and he didn't answer the question, and I will move to strike the answer.

The Court: Objection overruled.

Mr. Mitchell: I think I agree with Mr. Corinblit that you haven't answered the question.

Q. Why didn't you give—you were giving two runs down there and suppose the Paradise doesn't make enough of an offer to get the run, why don't you give them another run?

A. Well, because we had requests from exhibitors or at least the La Tijera, for the right to bid for our pictures in the Inglewood area, and it was our opinion that if we gave every exhibitor in there, in the area an equal opportunity, why, that is all that we were required to do.

Now, the question is not whether you give the Paradise one run. There are other people involved besides the Paradise. And as I explained the other

(Testimony of Alfred R. Taylor.)

day, it is like cutting up a pie. If you have two runs, why, you cut the pie in half. If you have three runs, you cut the pie in thirds and so forth. And it doesn't end only with the Paradise. There are other exhibitors in that area who have rights as well, so it would not only end up with two runs or three runs or four runs. If you gave every exhibitor the run they requested, they would all be playing day and date, so they would keep up with their competition, and as a result our pie would be cut so thin there would be nothing left and I don't believe the exhibitors could operate properly.

Q. In licensing your pictures first run Los Angeles and in licensing your pictures in the Inglewood-Westchester area, were you or your company engaged in any collusion or conspiracy or combination or agreement with Loew's or Warner Bros. or Universal or with Twentieth Century-Fox or, except for your licensing agreements with Fox West Coast, during this period 1950 to 1951?

A. No, we were not.

Mr. Mitchell: You may cross examine.

Cross Examination

Q. (By Mr. Corinblit): Mr. Taylor, you just answered a question by Mr. Mitchell to the effect that your company, neither you nor your company was in a conspiracy with the other companies in this area, in the Los Angeles area, and I want you to tell the jury what you meant by the answer—

(Testimony of Alfred R. Taylor.)

what you understood the meaning of the word "conspiracy" is.

A. What I meant—what was meant by the word "conspiracy"?

Q. Yes.

A. That all of the companies or Fox West Coast had banded together to conspire against someone.

Q. That is what you meant when you answered Mr. Mitchell's question? [3014] A. Yes, sir.

Q. Now, you were familiar with respect to first run in 1950 with how pictures were being played in Los Angeles, were you not? A. Yes.

Q. You knew not only what pictures—how pictures were being played by your company, but by the other companies as well?

A. Yes. I watched the newspapers every day.

Q. And during this time when Paramount, in 1950-51, when Paramount was playing its pictures primarily in the Paramount downtown, and Paramount-Hollywood first run—I will withdraw that.

Prior to the—and I will take the date from counsel, I think it is January 1, 1950, Paramount had an interest in the Paramount-Hollywood, is that right? Is the date January 1, 1950?

Mr. Mitchell: Yes. December 31st, prior to December 31, 1949, Paramount Pictures, Inc. owned some of the stock.

Mr. Corinblit: 50 per cent?

Mr. Mitchell: Yes, 50 per cent of the stock of Hollywood-Paramount Theatre Corporation which

(Testimony of Alfred R. Taylor.)

in turn had turned over the operation of the theatre to Fanchon & Marco, Inc.

Mr. Corinblit: As far as ownership of an interest in the theatre they——

Mr. Mitchell: It is just the way I said it. [3015]

Q. You knew that your company had an interest in the Paramount Hollywood Theatre Corporation prior to December 31, 1949, did you not?

A. Yes.

Q. 50 per cent interest? A. Yes.

Q. You knew that your company had an interest in the profits of the Paramount Downtown Theatre, is that correct, directly or indirectly? A. Yes.

Mr. Mitchell: When? Prior to any time we are concerned with here.

Q. (By Mr. Corinblit): Prior to December 31, 1949? A. Yes.

Q. All right. During this time, Mr. Taylor, that is turning now to 1950 and 1951, you knew that there were Warner theatres in the city, did you not, theatres in which Warners had an interest, is that correct?

A. Yes, I understood they had.

Q. These Warner's theatres never tried to get first run pictures from Paramount in 1950 and 1951, did they?

A. Not to my knowledge.

Q. You knew there were Fox West Coast Theatres in Los Angeles at that time, did you not?

A. Yes. [3016]

(Testimony of Alfred R. Taylor.)

Q. And Fox West Coast never tried to get Paramount pictures in 1950 and 1951, is that right?

A. No. We were exhibiting our pictures in the two Paramount theatres under the franchise.

Mr. Corinblit: I move to strike that out as not responsive.

Mr. Mitchell: Well, your Honor——

The Court: Denied. The answer was no and then he explained the no. But you are talking about first run pictures now?

Mr. Corinblit: Yes, sir, first run Los Angeles.

Q. You knew there were RKO theatres in Los Angeles in 1950 and 1951, did you not?

A. Yes.

Q. During that time the RKO theatres never sought to get Paramount pictures first run in Los Angeles, isn't that right?

A. Not to my knowledge, but again we were serving the two Paramount theatres under the franchise.

Q. Now, in 1950 and 1951, there were United Artists Theatres in Los Angeles, were there not? That is the Loew's State downtown and the Egyptian in Hollywood?

A. I don't recall whether they were operated at that time by United Artists or by Fox West Coast.

Q. All right. You recall whoever operated them did not try to get Paramount pictures first run [3017] during that period, isn't that correct, 1950 and 1951?

(Testimony of Alfred R. Taylor.)

A. I am trying to recollect in the downtown area. We had some requests to bid for our pictures in the downtown area, and I believe that request came from RKO. I mentioned that a moment ago, RKO did not endeavor, but I believe at one time around at that time RKO asked for the right to bid for our pictures downtown.

Q. You don't know whether that was after September or before, do you?

A. No, I am not sure.

Q. Mr. Taylor, during the same period you did not offer Paramount pictures to Fox West Coast, did you?

A. We were exhibiting our pictures under a franchise——

The Court: You can answer that yes or no.

Q. (By Mr. Corinblit): Did you offer them to Fox West Coast?

A. We had none to offer.

Mr. Mitchell: On first run you are talking about?

Mr. Corinblit: On first run.

The Witness: We had none to offer.

The Court: You can answer that yes or no.

Mr. Corinblit: May that answer be stricken, your Honor?

The Court: It may go out.

Mr. Mitchell: May he not explain, your Honor, after he answers? [3018]

The Court: After he says yes or no.

Mr. Mitchell: I think what they want you to do

(Testimony of Alfred R. Taylor.)

is answer yes or no and then if you want to explain, you can.

Q. (By Mr. Corinblit): Did you offer them to Fox West Coast? A. No.

Q. Did you offer them to Warners?

A. No.

Q. Did you offer them to RKO?

A. No. In each case it was because we were exhibiting our pictures in the two Paramount theatres under the franchise that was in existence.

Q. You did not offer them to United Artists Theatre Circuit either, did you?

The Court: He did not offer them to anybody. He will testify he did not offer them to anybody.

Mr. Corinblit: Yes, your Honor. But let's get this in the record.

Q. Is that right, Mr. Taylor?

A. United Artists? As I said, I don't recall whether United Artists was operating those theatres at that time, but if it will help, we did not offer them to United Artists downtown or the Egyptian Theatre in Hollywood, which was generally known as the United Artists Theatre.

Q. You knew at the same time that you weren't [3019] offering your pictures to these theatres, that Universal was playing in the Fox houses, isn't that right? A. Not necessarily.

Mr. Mitchell: Playing in the Fox houses, your Honor—

Mr. Corinblit: All right.

Mr. Mitchell: There were quite a few Fox houses.

(Testimony of Alfred R. Taylor.)

Q. (By Mr. Corinblit): You knew at that time, Mr. Taylor, that Universal was playing its pictures in four Fox West Coast theatres and the United Artists Theatre downtown, and was not offering its pictures to any independent exhibitor, isn't that correct?

A. I don't know that to be so. Universal has quite a number of pictures. I think they would offer them to a number of theatres to secure liquidation for the number of pictures that they had.

Q. My question is whether you know one way or the other. The play-off is in the record. If you don't know, all you have to do is say you don't know.

A. I wouldn't know unless I looked at the record and saw what happened to all their pictures.

Q. With respect to Loew's pictures, you know that the Paradise Theatre was not offered any Loew's pictures in 1950 and 1951, don't you?

A. Not to my knowledge, no. [3020]

The Court: How would he know what Loew's did to the Paradise?

Mr. Corinblit: Well, your Honor, your question is based on the assumption that these people didn't know what the others are doing.

The Court: He said no. He understood the question, evidently. I don't know, but I don't know how he would know what Loew's was doing.

Q. (By Mr. Corinblit): Now, you referred, Mr. Taylor, to the fact that your company had a franchise, is that right? A. Yes.

(Testimony of Alfred R. Taylor.)

Q. Now, did you testify that during this period—I will withdraw that.

You knew, of course, that this franchise agreement was not an exclusive agreement, didn't you?

A. No, I did not.

Q. You did not know it?

A. No, I did not.

Q. When Judge Westover made such a ruling, that it was not exclusive, did you offer your pictures immediately to the Paradise Theatre?

A. No, we did not, because even though Judge Westover determined that the franchise was not exclusive, he also determined that the clearance provisions of the franchise were fair and reasonable, as I recall the words, and even though [3021] the franchise within itself did not state the word exclusive, the fact remained that the clearance provisions embodied in the franchise automatically gave the Paramount theatres clearance over all the other theatres in the metropolitan area.

Mr. Corinblit: May I have the franchise agreements?

Q. I will show you Defendant Paramount's Exhibit H-1, H-2 and H-3, I believe, which are in evidence. Now, turning to H-1, which is the franchise of the Partmar Corporation, will you show me the language in this exhibit which you state prohibited you from playing any other theatre in the Los Angeles area on a day and date first run?

A. If it would help any, it has been several

(Testimony of Alfred R. Taylor.)

years since I have read this. I don't know where it is.

Q. I don't remember the section.

A. Do you want me to sit here and look for it?

Mr. Mitchell: The clearance provision is on page 22 under paragraph fourteenth B.

The Witness: 22?

Mr. Mitchell: That applies to the first year, and then there is another provision that makes the first year continue throughout the period of the agreement. You have to put several together. This is a lawyer's job, not a layman's job, to interpret this agreement. In fact, Judge Westover is the expert on it. [3022]

The Witness: I believe that 14-A begins to describe the clearance, and B gives you the provisions of the clearance. Shall I read part of it?

Q. (By Mr. Corinblit): Go ahead.

A. The same clearance accorded by Paramount to the exhibitor during 1938-1939 release year, subject to such changes as may be mutually agreed upon in writing between the parties thereto from time to time.

Q. Now, let's talk about this provision that the clearance is to be the same as it was in 1938-1939. You came here in what year?

A. 1945, March.

Q. Somebody told you what the clearance was here at the time, is that right?

A. Yes. I would say the bookers or the sales-

(Testimony of Alfred R. Taylor.)

men in the office. I had to get acquainted with it because that is my job.

Q. They told you what the clearance in 1938-1939 was in order for you to know what the franchise meant?

A. No. If I came here in 1945, I believe I went over the clearances as they existed.

Q. As they existed in 1945?

A. That's right.

Q. Under the franchise agreement, I think you testified yesterday or on Friday that the downtown Paramount had the right [3023] of clearance which would have prevented an additional run in the Inglewood area, isn't that right? A. Yes.

Q. In other words, under the agreement you weren't supposed to do that?

A. That is correct.

Q. But you did it, is that right?

A. Well, it isn't clearly stipulated as to the number of runs, but it has been—was historically so, that there was one run. [3024]

Q. All right.

A. So we felt there was a slight violation by putting in two—a calculated risk.

Q. You took a calculated risk by a slight, what you describe as a slight, violation? A. Yes.

Q. Now, under this agreement that you have described Paramount also had the right that—or, rather, the downtown theatre had the right and agreed with Paramount, that you couldn't license any other theatres in the Los Angeles area day and

(Testimony of Alfred R. Taylor.)

date with the Paramount Downtown and Paramount Hollywood, isn't that right?

A. That is correct.

Q. Now, you made another slight variation, didn't you, when you let the Fox Theatre in San Pedro play day and date with Downtown Hollywood, isn't that right?

A. Fox Theatre in San Pedro?

Q. Yes, the Cabrillo Theatre.

A. Well, that goes back to a time during World War II when pictures were being exhibited in Los Angeles for an extended period of time.

Q. May I interrupt you, Mr. Taylor? I know you want to explain but I will ask you, if you will, to answer the question first and that is that you did permit the San Pedro Theatre, the Fox Cabrillo in San Pedro, to play day and date with [3025] Downtown Hollywood and Paramount Hollywood—strike that. To play day and date with Paramount Downtown and Paramount Hollywood and that that was a breach of the agreement. Can you answer that question yes or no?

Mr. Mitchell: That calls for a legal conclusion of this witness and I don't know that he is qualified to tell whether the contract was breached by the San Pedro play. As a matter of fact, maybe the viewpoint of lawyers is otherwise.

The Court: Are you making an objection?

Mr. Mitchell: I am objecting on the ground that it calls for a conclusion of the witness.

The Court: Objection sustained.

(Testimony of Alfred R. Taylor.)

Q. (By Mr. Corinblit): You understood that Paramount Downtown and Paramount Hollywood had the right to insist that no other theatre play day and date with it. That is what you just said, isn't that right?

Mr. Mitchell: Just a minute. I object to that on the ground it calls for a conclusion. I mean if we are going into that kind of interpretation of the agreement we had better take the agreement itself. It is in evidence.

The Court: Objection overruled.

The Witness: I would say in the Metropolitan area, yes. But you are not defining each city. If you want to go over each city—

Q. (By Mr. Corinblit): The question is—the [3026] fact is you then did have the San Pedro Theatre, a Fox theatre playing day and date with Downtown Los Angeles and Hollywood, isn't that correct? A. Yes.

Q. All right. Now, under this agreement it was also true that the Paramount Downtown and the Paramount Hollywood had the right and Paramount agreed that at this time they would have—

Mr. Mitchell: What time—which time?

Q. (By Mr. Corinblit): Have clearance over Wilmington in 1948-49. The agreement, Mr. Taylor, was in force at that time. In other words, they had 21 days over Wilmington, didn't they?

The Court: Who is "they"?

Mr. Corinblit: Paramount Downtown and Paramount Hollywood.

(Testimony of Alfred R. Taylor.)

The Witness: I don't recall what clearance they had over Wilmington. I don't know why Wilmington should be listed in there, actually, because Wilmington followed San Pedro, so it would automatically follow.

Q. (By Mr. Corinblit): All right. Now what was the clearance of Paramount Downtown—what was the clearance in 1938 and 1939 of the Paramount Downtown and Paramount Hollywood over Wilmington?

Mr. Mitchell: Object to that as immaterial. We are way outside of the area. [3027]

The Court: What is the purpose of this?

Mr. Corinblit: Mr. Taylor testified the reason that he didn't permit us to play day and date under the franchise was because the franchise prohibited it. And I am showing now that Paramount did what they wanted to do under the franchise if Fox was involved.

We already have had testimony that San Pedro was permitted to play first run day and date with Downtown Paramount and Hollywood Paramount.

The Court: Objection overruled.

Q. (By Mr. Corinblit): Now, Mr. Taylor, you don't know—you know, don't you, that in 1938 and 1939, which is referred to in the franchise, there was clearance, 21 days clearance over all theatres in the city of Los Angeles, isn't that right?

A. Yes.

Q. And Wilmington is in the city of Los Angeles.

(Testimony of Alfred R. Taylor.)

A. Well, it wasn't agreed to in that sense, I believe. I never felt it meant in that respect. Wilmington is a part of the San Pedro area as we define it, so if San Pedro plays on a certain availability Wilmington comes automatically in behind.

Q. You know that Wilmington is a part of the city of Los Angeles?

A. Well, I don't— [3028]

Q. In a legal sense.

A. You don't do everything on boundaries.

The Court: At that time was it a part of the city of Los Angeles? It may be now.

Mr. Corinblit: Yes. Mr. Mitchell, you will stipulate that Wilmington was a part of the city of Los Angeles in 1948-49?

Mr. Mitchell: Not in the meaning of the words used in this agreement.

The Court: Within the meaning of the city limits.

Mr. Corinblit: Within the meaning of the city limits.

Mr. Mitchell: I think it was.

Mr. Corinblit: You think it was.

Q. All right. Now, is it your testimony, Mr. Taylor, that there was some different definition of the city of Los Angeles other than the city limits in the clearance agreement? A. Yes.

Q. There was?

A. Yes, that Wilmington—you know as well as I do that this town is spread over a very vast area and the problem as to whether Wilmington was

(Testimony of Alfred R. Taylor.)

within the city of Los Angeles or whether it was not would not enter into this problem because Wilmington followed San Pedro.

Q. When you came here?

A. Yes, but you don't know what it was doing in 1938 and '39, do you? [3029]

A. No.

Q. As a matter of fact, you really do know because what you looked at when you came here was the Blue Book, didn't you, the Fox West Coast Blue Book?

A. No, I did not.

Q. You did not look at the Blue Book?

A. No.

The Court: Mr. Corinblit, it is exactly 3:00 o'clock and you are resting at the right time.

Ladies and gentlemen of the jury, we are going to take another recess and again it is my duty to admonish you that you are not to discuss this case with anyone; you are not to permit anyone to discuss it with you and you are not to formulate or express an opinion as to the rights of the parties until the case has been finally submitted to you.

With that admonition we will now take a recess until 3:00 o'clock.

(Short recess.) [3030]

The Court: Stipulate the jury is present in the box?

Mr. Corinblit: So stipulated.

Mr. Mitchell: Yes, your Honor.

The Court: You may proceed.

Q. (By Mr. Corinblit): I think before the re-

(Testimony of Alfred R. Taylor.)

cess, Mr. Taylor, I asked you whether or not you had examined the Blue Book when you came here to Los Angeles. So the jury knows what we are talking about, I will show you Plaintiff's Exhibit 32-B for identification and ask you whether you understand this is the Blue Book, and that is the sense in which you answered my question.

Mr. Mitchell: I object to that, your Honor, upon the ground it is incompetent, irrelevant and immaterial. He didn't examine it and that is that.

The Court: Sustained. He said he never saw it, he never examined it.

Mr. Corinblit: Your Honor, I think we ought to give Mr. Taylor another chance.

The Witness: I did not mean to imply that I never saw the book. He asked when I came here to Los Angeles if I examined it, and the answer is no, I did not.

The Court: You did not examine it?

The Witness: But I have seen the book.

The Court: You just saw it and never examined it. [3031]

The Witness: Not when I first came to Los Angeles. I have seen the Blue Book and I have read the Blue Book.

The Court: Objection overruled.

Mr. Corinblit: Will you read the question, please?

(Question read.)

The Witness: Now, I have answered that.

The Court: Is that the Blue Book you understand counsel was talking about?

(Testimony of Alfred R. Taylor.)

The Witness: Yes, I believe it is. Just a moment. Yes.

Q. (By Mr. Corinblit): Now, as a matter of fact, all of the clearances referred to in the Paramount franchise agreement stem from the Blue Book, isn't that right?

Mr. Mitchell: I object to that upon the ground it calls for a conclusion of the witness.

The Court: Sustained. I don't think that is an issue in this case.

Mr. Corinblit: That is correct, your Honor. I am not making a broad issue in any sense of the Blue Book in this case, in no sense. What I am doing is developing a point, and still the point with respect to the franchise only and the Blue Book only as it relates to the franchise.

The Court: I will sustain the objection.

Q. (By Mr. Corinblit): Now, referring to the provisions in the franchise agreement which you [3032] testified meant that clearances were to be the same as those in effect in 1938 and 1939, it is a fact, is it not, that under the clearances in '38-39 there was no right on the part of the Fox Theatre in Wilmington to play 7 days after Los Angeles, isn't that correct? A. I do not recall.

Q. I will show you Plaintiff's Exhibit 32 for identification and ask you to examine page 24, which has the provisions for clearance with respect to San Pedro and Wilmington, and ask you if that refreshes your recollection that under the clearance provisions of the franchise in 1938-39, the Fox The-

(Testimony of Alfred R. Taylor.)

atre in Wilmington could not play 7 days after Los Angeles.

A. I don't know. I would have to go back and look at the actual 1938-39 clearance.

Q. I am asking you whether this refreshes your recollection. Will you look at it and then tell me whether it refreshes your recollection in that respect.

A. I don't recall.

Q. So this does not refresh your recollection, is that it?

A. I don't know whether the clearance in 1938-39 was off of here or not. I don't know.

Q. You don't know.

A. To me Wilmington and San Pedro are a sufficient distance away that they were in what I would call another area. [3033] Wilmington was contingent upon San Pedro and not upon Los Angeles. If San Pedro played earlier, then Wilmington following San Pedro had that opportunity. The problem was brought around by the fact that during the latter part of World War II, because business was so good in Los Angeles and Hollywood that the pictures were playing longer and longer as they were released, in other words, instead of getting two weeks or three weeks run of quality pictures in Los Angeles and Hollywood, we were getting four, five, six, seven, eight weeks run. The result was that the theatres in Long Beach were running out of pictures and they were asking from time to time for a move-up to fill this vacant time, and we were granting those move-ups, and as we

(Testimony of Alfred R. Taylor.)

granted them to Long Beach, why, San Pedro is contingent upon Long Beach, so San Pedro automatically moved up. That is a problem that arises in our business from time to time.

Q. Now you have switched to Long Beach, Mr. Taylor.

A. Because you talked about San Pedro, and San Pedro is contingent upon Long Beach.

Q. Let's get this clear now. A. Yes.

Q. You played San Pedro day and date first run Los Angeles, and that was a Fox theatre.

A. Yes, but I told you the reason why was because it stems from Long Beach, not San Pedro in itself. [3034]

Q. You played Long Beach with Los Angeles and those were Fox theatres, isn't that right?

A. Yes, plus what is known as the Arthur or Cabart Theatres, of which Fanchon & Marco, some of them are part owners in the Cabart Theatres. I don't know exactly what the breakdown is.

Q. But the theatres that regularly play first run Long Beach were Fox houses.

A. Because outside of Arthur they were the only people operating first run.

The Court: You can answer that yes or no.

Mr. Corinblit: I move to strike the answer.

The Court: It may be stricken. You can answer that yes or not.

The Witness: Yes, but they were the only people operating the first run theatres outside of Cabart.

(Testimony of Alfred R. Taylor.)

Q. (By Mr. Corinblit): When you moved up San Pedro, and you moved them up to day and date first run, that was a Fox house, and you moved up Long Beach Fox houses to first run, you were doing that in the face of the provisions of the franchise, were you not?

A. Yes, and I explained why.

Q. But when the Paradise came and asked you for first run in the Westchester area, you refused to permit the Paradise Theatre to move up to day and date first run, and you gave them as [3035] your reason the franchise, didn't you?

A. I don't believe the Paradise or the Picwood or the La Tijera can in any stretch of the imagination be compared with San Pedro. The problem is entirely different.

Mr. Corinblit: I move to strike that out.

The Court: It may go out. Please read the question, and you pay attention to the question. Read the question.

Mr. Mitchell: The witness can explain his answer, can he not?

The Court: Yes, but he can answer the question first. Read the question.

(Question read.)

The Court: Now you can answer that yes or no, and when you answer, you can explain your answer, if you wish.

The Witness: Yes, we did, but I don't consider that the Paradise Theatre or the La Tijera or the Picwood or the Baldwin or the Crown Theatre in

(Testimony of Alfred R. Taylor.)

Pasadena or those type of theatres that asked us for first run to be in the same class with the situation in San Pedro or Wilmington or Long Beach.

Q. (By Mr. Corinblit): Mr. Taylor, you know the Paradise area, don't you? A. Very well.

Q. We never have actually put down the distance. Do you know what the distance is from the [3036] Paradise to the Hollywood Paramount?

A. No, I do not recall what it is.

Mr. Westbrook: I will offer you a stipulation, counsel. It is approximately 10 miles.

Mr. Corinblit: 10 miles.

Mr. Westbrook: Is that stipulation acceptable?

Mr. Corinblit: That stipulation is acceptable, subject to correction.

Q. Now, Mr. Taylor, have you any idea how many people from the Paradise go to the Hollywood Paramount? A. No.

Q. Have you any idea how many people from the Paradise go to the downtown Paramount?

A. No, I do not, but exhibiting those pictures in our show case theatres, it is our opinion that they draw some amount of people from all of the area surrounding Los Angeles. [3037]

Q. You don't know—as a matter of fact, you don't know if there are five people or 50 people, do you? A. No, I do not.

Q. Now, you likewise don't know how many people come from San Pedro, do you?

A. No, but based upon my experience in the business, it would be my opinion that there would

(Testimony of Alfred R. Taylor.)

be a lesser number than there would be from the Westchester area.

The further away you get from the focal point, the less patronage you get.

Q. And you don't know how many people come from Long Beach to the first run downtown or Hollywood theatre, do you?

A. No. My answer would be the same as it pertains to San Pedro. It is comparable to the other situations that are closer.

Q. Now, as a matter of fact you not only refused—you testified in this case that you refused the Paradise the privilege of playing first run Los Angeles.

Now, as a matter of fact, you refused other theatres that were—other non-Fox theatres the right to play first run with Los Angeles, didn't you?

A. Yes, I believe I mentioned them.

Q. And all the others that you refused to permit to play day and date were non-Fox persons asking for first run, isn't that right? [3038]

A. I believe that is so, but we had to determine, for instance, in the case of the Picwood, we considered them to be competitive with the Village Theatre and the Bruin Theatre in Westwood, which was competitive to Fox. So, we commenced bidding in that area originally, giving them an opportunity to play the Fox runs.

In Pasadena the Crown Theatre—the request was from the Crown Theatre and Fox also operated the Academy Theatre, and when the Crown

(Testimony of Alfred R. Taylor.)

Theatre opened, we gave them an opportunity to bid for the run that Fox formerly had.

Q. But you refused them the right to play first run?

A. Yes, because of the existence of the franchise.

Q. Because of the existence of the franchise?

A. Yes, sir.

Q. You refused non-Fox defendants the right to play first run but it was all right to permit Fox defendants to play day and date first run?

A. It doesn't make sense.

Q. I agree with that.

A. I am saying that your question doesn't make any sense for the reason that the request came from non-Fox houses.

Now, Fox did not have all of the first runs. Fox made no request to play our pictures first run in Inglewood or Pasadena or Westwood. So if the requests only came from non-Fox houses [3039] we turned the requests down based upon the franchise and not because of the theatres or who the owners were.

Q. But when Fox requested the Long Beach Theatre have first run and the San Pedro Theatre the first run to play day and date, you did that even though the franchise prohibited it, isn't that right?

A. Well, I attempted to explain the situation in Long Beach. Each situation is different and if they ran out of pictures, if Long Beach—and it wasn't only Fox. The Arthur people were running

(Testimony of Alfred R. Taylor.)

out of pictures, too, and in my opinion that was a reasonable solution to the problem with which we were faced.

Q. You testified, I think, that—what was it, approximately in June or September of 1952 that you went—that you began to play multiple day and date? A. July 9, 1952.

Q. July 9, 1952? A. Yes.

Q. Now, I think you testified that under this arrangement that you worked out all exhibitors in each one of these areas surrounding the urban core had a right to compete for first run pictures?

A. I believe that they would all be included. I mean—I don't know—you tell me the area that you are referring to. [3040]

Q. I am excluding what you have described as the urban core.

A. Well, you may be a little—there may be a little question about the area out in East Los Angeles, around Belvedere Gardens and Whittier. That was excluded. We called that “No man's land.”

Q. And your company was the first one to do that?

A. On the basis that we are now operating.

Q. As a matter of fact, Mr. Taylor, to your knowledge no one has ever—no one ever permitted independent theatres in this city to compete for first run pictures in the Los Angeles area prior to the time you did it in July of 1952, isn't that right?

A. You mean on a multiple basis?

(Testimony of Alfred R. Taylor.)

Q. Yes.

A. There was no multiple system in operation.

Q. So no independents were ever permitted to compete for first run in those areas?

A. Neither were Fox or Warner Bros. or anyone else.

Q. Then your answer to my question as far as independents were concerned, they were not permitted to play first run, is that right?

A. That is right, as far as we were concerned. The runs weren't in existence.

Q. You say the runs were not in existence?

A. Were not. [3041]

Q. You knew, however, of course, that Universal was playing first run in the Culver area?

A. I didn't consider that a multiple run as far as that is concerned. That is their business.

Q. You don't consider two or three theatres playing, or three or four theatres playing day and date to be multiple first run?

A. No. I believe they took a group of theatres and put them together as best they could.

I believe that our plan has some semblance of intelligence and reasoning and it is entirely different.

Q. Mr. Taylor, do you remember testifying before the Subcommittee of the Select Committee of Small Business? A. Yes.

Q. In Los Angeles? A. Yes, I do.

Q. I want to call your attention to your testimony at page 238 where you are describing what

(Testimony of Alfred R. Taylor.)

you mean by "multiple run," and I want you to read that answer, the one that is marked with a check.

A. You mean for me to start right here, "Now, Mr. Arthur——"?

Q. Yes.

The Court: Read it to yourself. [3042]

The Witness: Oh, read it to myself, pardon me.

The Court: Don't read it out loud.

The Witness: Yes.

Q. (By Mr. Corinblit): Now, does that refresh your recollection, Mr. Taylor, that what you meant and what you mean by the term "multiple first run" is three or four theatres playing together?

A. Well, that is an area in Long Beach you are talking about.

Q. If it is an area in Long Beach, your meaning of the words "multiple run" is that if three or four theatres playing together, that is multiple first run?

A. No, I would say in Long Beach—Long Beach is a much smaller town than Los Angeles, and to me four runs in Long Beach is a multiple number of runs because it is a very small town comparable to Los Angeles.

Q. Now, your meaning before this House Business Committee was that three or four theatres in Long Beach is multiple first run, but if you are talking about three or four theatres playing day and date in Los Angeles, that is not multiple first run?

(Testimony of Alfred R. Taylor.)

A. That is right. I think that Universal put a group of theatres together as best they could work out with Fox.

Q. What do you understand by the meaning of the word "multiple"? [3043]

A. Multiple to me is an intelligent—we organized the term, as far as I know.

Q. You originated the word "multiple"?

A. I mean applicable to our plan. I don't recall as it was ever referred to before in our business because multiple runs were not in existence in the United States.

The Court: The question wasn't what you understood by "multiple first runs," but the question was, what do you understand by the word "multiple"?

The Witness: The word "multiple" as I understand it applied to our system——

The Court: Not when it applied to anything. What does Webster say "multiple" means?

The Witness: It means a group—a multiple number.

The Court: More than one?

The Witness: Yes.

Q. (By Mr. Corinblit): By the way, Mr. Taylor, when some of these other non-Fox defendants asked you for first run, you told them you wouldn't let them play first run and you gave them more than one reason. In other words, you told them, "A"—"You can't play first run because of the franchise," and "B"—"You can't play first run

(Testimony of Alfred R. Taylor.)

because we want a showcase." Isn't that right? Isn't that what you told them? A. No. [3044]

Q. You didn't say that?

A. To whom are you referring?

Q. Let us talk about the Picwood. When the Picwood asked you for first run you told them they couldn't play first run and you gave them more than one reason why they couldn't?

Mr. Mitchell: If we are going to have a conversation, I think we should know who were there and when it was and what was said and so forth. I object because there is no foundation.

Q. (By Mr. Corinblit): You signed an affidavit in which you gave more than one reason for not selling to the Picwood?

A. I wouldn't recall.

Q. You don't recall?

A. No, I don't recall.

Q. You don't recall signing an affidavit in the Picwood case?

A. Yes, but I don't recall it.

Q. We may be able to get that before tomorrow morning and we will go into it at that time.

Now, as a matter of fact, Mr. Taylor, this multiple first run—your policy of first run has proved to be very successful for Paramount, has it not?

A. It was more successful in the earlier period of time than it is today, generally speaking, because [3045] we had a change in our type of product.

Q. That is to say, when you went to it in 1952 it was quite successful?

(Testimony of Alfred R. Taylor.)

A. I would say in 1952 it was quite successful.

Q. And in 1952, do you remember if you did much in the way of one theatre showcasing in 1952?

A. I don't recall. I would have to look at our release schedules.

Q. You don't recall whether you did or not?

A. I say I would have to look at the release schedules. I will be very willing to look at it tonight and tell you in the morning.

Q. All right. Now, I think you testified before that one of the reasons you went to first run—multiple first run was this matter of drive-in theatres. Is that right? A. Yes.

Q. That was one of the factors?

A. Yes, sir.

Q. That you took into consideration the matter of multiple first runs? A. Yes, sir.

Q. When did you say the drive-in theatres had all the physical facilities which would qualify them to play on an earlier availability?

A. I don't believe I said because I actually don't know. [3046] I say it progressed over a period of years—each year they improved.

Q. Well, the progress—

A. The fact remains that we had a franchise that did not expire until 1952 so we could do nothing about multiple runs at that time.

Q. But the drive-ins were qualified to go into first runs at least as early as 1950, weren't they?

A. I don't recall. It may be so.

(Testimony of Alfred R. Taylor.)

Q. And the reason for that is, as far as this business of inside speakers and good lenses with good light, that was all established by 1950, was it not?

A. No, I wouldn't say that it was at all. I don't think they have solved their entire problems yet, but they are improving all the time.

Q. Well, they had inside speakers in 1950?

A. Oh, yes.

Q. And they had good light in 1950?

A. No, they still have a problem, Mr. Corinblit, in our opinion, in the projection of motion pictures. They never get on to the screen. For example, in the Century Drive-In the quality of the picture, as far as it is photographed as would be in the case of the Paradise Theatre.

Q. Mr. Taylor, you are not saying that as of July, 1950, all these drive-in theatres got new [3047] projection equipment and got new lighting?

A. No, I am not endeavoring to say that at all. I am telling you that over a period of years there has been a continual progress in the drive-in operation and equipment, but they still have problems. They haven't eliminated all their problems.

Q. They had enough light in 1951 to qualify them to play first run pictures?

A. I would say yes. They have problems. For instance, in a black and white picture the drive-in has far more problems than in a Technicolor picture, because Technicolor pictures show up much better on the screen than black and white.

Now, it only has been in the later years that the

(Testimony of Alfred R. Taylor.)

vast majority of pictures from the top companies in this business have gone into Technicolor.

As you go back through the years there is less and less Technicolor productions.

Q. Now, you told the drive-ins prior to 1952 that they couldn't play first run, isn't that right, in Los Angeles?

Mr. Mitchell: Now, let us lay a foundation. I object to it on the ground no foundation has been laid. "You tell the drive-ins," that is people. Have him tell us what the people said.

Q. (By Mr. Corinblit): It was the policy of Paramount to refuse drive-ins in 1951 first run pictures? [3048]

A. We refused everybody first run pictures in 1951, not only the drive-ins.

Q. You refused the drive-ins, too?

A. I don't know that we refused them. I don't think they ever asked, if I recall correctly.

Q. Don't you know that all the film companies in this area refused the drive-ins any right to play first run?

Mr. Mitchell: I object to that on the ground no foundation has been laid.

The Court: Sustained.

Q. (By Mr. Corinblit): Mr. Taylor, I want to go back to this point of success of your 1952 operation.

You don't take the position that if one theatre in Hollywood and one theatre in Paramount played the picture day and date——

(Testimony of Alfred R. Taylor.)

Mr. Mitchell: You don't mean what you say. You said one picture in Hollywood and one picture in Paramount.

Q. (By Mr. Corinblit): One theatre in downtown Los Angeles and one theatre in Hollywood played pictures day and date and then a comparable picture is played multiple day and date, that all they do in a multiple day and date is divide up the patronage that the two theatres would have gotten, do you? You don't take that position?

A. I don't understand your question. [3049]

Q. Well, let's assume that the theatre in Hollywood and the theatre downtown grossed \$35,000 in a week.

A. Yes.

Q. When you play multiple day and date, you gross more than \$35,000 in a week ordinarily, don't you?

A. On a comparable picture?

Q. Yes.

A. You mean counting the 10 together?

Q. Yes.

A. Oh, yes, sure.

Q. There is no question about that.

A. No.

Q. In fact, you at times grossed as high as \$100,000 in the first week?

A. In 10.

Q. The picture Partners recently played, and what did that gross in Los Angeles?

A. The first week grossed 99,600 and some dollars, and the second week, if I recall, with nine theatres, it grossed 35,000. I may be off a thousand or two.

Q. You don't take the position that that gross in those two weeks would have been earned in the

(Testimony of Alfred R. Taylor.)

Hollywood Paramount and the Downtown Paramount if they had played the picture alone, do you?

A. No. I never intended to take that position.

Q. So it is not just a question of dividing up the patronage. You play multiple day and date to add to the first run patronage, don't you?

A. Yes, sir, that is our plan.

Q. The reason for that is evident, you add a new theatre in a new area first run, you make it more convenient and easier for people in each one of these areas to see the pictures, the admission price goes up and the people who are willing to pay more for first run will go there and you will get more patrons, isn't that right?

A. Certainly. That was our original plan. There is no mystery about our system. It wasn't caused by any stroke of genius. We were watching Barker Bros., Bullock's, the Broadway and other merchants of that type building stores in the outside areas. In other words, they were bringing, in our opinion, a greater amount of their merchandise to a greater number of their potential customers.

Q. All right.

A. So we arrived at more or less the same conclusion.

Q. Now, in 1950 and 1951, if you had added the Paradise Theatre as a first run theatre in Westchester, just like Fox had the first run theatre in the Loyola Theatre, you would have added revenue, first run revenue, to Paramount's treasury, would you not?

(Testimony of Alfred R. Taylor.)

A. I would question that very much, because [3051] for the reason it may have added to the treasury, but you have other areas where they were asking for the same provisions, and we had a franchise which was in existence, and we were of the opinion that we would be subject to litigation from Fanchon & Marco because we violated the franchise, so we may have added temporarily to our treasury, but paid it out in lawyers' fees and court costs.

Q. In other words, as far as income from the distribution of pictures, you would have added revenue to your treasury if you had let the Paradise play day and date first run with the Hollywood and downtown?

A. I would say if we added the Paradise, yes, we would have got more revenue, but that is not treating all the exhibitors in the area fair and proper.

Q. When you in 1952—perhaps you can remember back at that time when you finally went to this policy that you described, you went multiple first run on your best pictures or your middle bracket pictures, didn't you?

A. Well, we started off with *The Greatest Show on Earth*.

Q. Which was a great picture.

A. Which was show cased previously in the Orpheum Theatre downtown and in the Warner's Theatre in Beverly Hills. We naturally put our best foot forward. Actually, we juggled our releases

(Testimony of Alfred R. Taylor.)

around so that we would have four or five quality [3052] pictures so that we could establish the plan.

In addition to that, we were the only ones running on that basis and we were very important to the exhibitors in the area, because we were the only ones giving them a first run.

Q. And you put top pictures into that multiple policy, isn't that right?

A. Yes, but there has been a change, as I have told you, a change in the quality of our motion pictures. We are making what you might consider, as comparable to this year, we are making more adult entertainment than we were then. We had pictures such as *Naked Jungle*, *War of the Worlds*, *Far Horizon*, *Hell's Island*, *Whispering Smith*, that are pictures that are particularly adaptable for multiple run in our opinion.

Today we are making a different type of product, as I explained this morning, of all the pictures that were played exclusive.

Q. Didn't you testify yesterday that downtown theatres, it got to the point where the downtown theatres can only play action pictures and that type? Did you testify that way yesterday?

A. I said that the most successful pictures today in the downtown area are pictures of action and violence.

Q. And the real quality pictures aren't successful downtown at all? [3053]

A. Generally speaking, no. It all depends on each individual picture.

(Testimony of Alfred R. Taylor.)

Q. Quality pictures are more successful in the outlying areas than they are downtown.

A. No, no, not at all. I would say that the——

Q. Pardon me. I'm sorry.

A. It all depends on the individual picture. If you want to ask me about an individual picture, I will give an individual answer. It is not something that you can answer overall. After all, there have been pictures that are not pictures of action and violence that have been successful downtown, too. There are exceptions to the rule.

Q. I am not talking about the exceptions. I am talking about the general rule. When you say pictures of violence and action are the most successful pictures downtown, don't you mean that the other pictures of quality are more successful somewhere else other than downtown?

A. Well, I would say that a picture like *The Rose Tattoo* would be far more successful on Hollywood Boulevard or on Wilshire Boulevard than it would be downtown, if you wish to compare those areas.

I would say that certain types of pictures are far more successful on Hollywood Boulevard than they are on Wilshire Boulevard. One of the problems on Wilshire Boulevard is, for example, the matinee business is very poor. On [3054] Hollywood Boulevard, you have a finer matinee business.

So overall, generally speaking, you have a better success on Hollywood Boulevard than you do on Wilshire Boulevard.

(Testimony of Alfred R. Taylor.)

Q. Mr. Taylor, you remember that Mr. Schreiber and his son came to see you and asked you for first run pictures in about—first they wrote you a letter in February 1950, do you remember that?

A. I don't recall the date, but I recall the letter, yes.

Q. I will show you Plaintiff's Exhibit 1-A in evidence, which is the letter making the request of Paramount for first run.

A. Yes, I recall this letter.

Q. All right. Now, you sent a reply on February 9 to Mr. Schreiber in which you said: "This is in reply to your letter of February 6, 1950," and so forth.

"At the present time, we have franchises in existence, under the terms of which the Paramount Theatres in Los Angeles and Hollywood have the exclusive right to play our pictures first run in the Los Angeles area. We are, therefore, unable to comply with your request."

Yes, I recall that letter.

Q. The very next day, the very next day, while you were writing here in Los Angeles, Mr. Schwalberg, the president [3055] of your company was writing to Mr. Schreiber from New York, and he was saying this, Exhibit 1-B in evidence, talking to Mr. Schreiber.

"My dear Al:

"I have your letter of February 6 with copy of one addressed to our branch manager. I am requesting a complete report from Los Angeles and will

(Testimony of Alfred R. Taylor.)

communicate with you further as soon as I have had an opportunity to get the facts and give them consideration.”

A. Yes.

Q. You turned Mr. Schreiber down on February 9th when your president was saying he is going to consider the facts.

A. It so happened that the legal department attorney, Mr. Kaufman, was in Los Angeles at the time we received Mr. Schreiber's letter, and so we took care of the matter.

Q. You and the legal department took care of the matter without reference to the president of the company?

Mr. Mitchell: That isn't the president. That is the vice president in charge of sales.

The Witness: No.

Mr. Mitchell: Mr. Balaban was the president.

Mr. Corinblit: Mr. Schwalberg is listed on the document as being the president of Paramount Pictures Film Distributing Company. [3056]

The Witness: Mr. Schwalberg is president of Paramount Film.

Q. (By Mr. Corinblit): You say you and the lawyers decided this in Los Angeles.

A. Yes. Mr. Kaufman and Mr. Smith and Mr. Carman of O'Melveny & Myers and myself, we had a discussion over Mr. Schreiber's letter.

Q. Mr. Kaufman is a lawyer?

A. Yes, he is. He is our home office legal counsel.

Q. And Mr. Carman is a lawyer? A. Yes.

(Testimony of Alfred R. Taylor.)

Q. So that on February 9, 1950, as far as Paramount was concerned, you were consulting your attorney with respect to the Paradise request?

A. On what date?

Q. February 9, 1950.

A. Well, it might have been the day before or the day prior. I don't know.

Q. You consulted your lawyers, as a matter of fact, with respect to every letter you decided to write, didn't you?

A. Yes. We discussed with our lawyers any legal problem we have or any problem that involves clearances and availability in any situation in the territory.

Q. And you also discussed the matter of your making memoranda of conversation, didn't you?

A. No.

Q. You did not so discuss it?

A. No. The bidding situations are approved by Mr. Smith and myself and I handle them personally, and those memorandums are my own, and they are in existence for every bidding situation.

Q. When you received a letter from Mr. Lehman, you would send it to your lawyer immediately, would you not?

A. Oh, not necessarily. It all depended on what the letter was.

Q. I think we were talking about some memoranda earlier in the day. I ask you, with reference to your memoranda that Mr. Mitchell introduced in evidence, beginning with E-21 and E-22, E-31, E-35,

(Testimony of Alfred R. Taylor.)

E-37, E-36, before this time you had written to your attorneys with respect to the request made by Mr. Lehman after the picture *Born Yesterday* was played for the right to negotiate for your pictures on 7 day availability, isn't that right?

A. I wrote with a request to Mr. Lehman of clear 7 day run?

Q. No. You took Mr. Lehman's letter, when he asked you for 7 day availability, to negotiate for it, and you sent it to your lawyer in New York.

A. I don't recall. You would have to show me the letter. [3058]

Mr. Mitchell: Let me see what you are showing him, please.

Mr. Corinblit: Yes, sir. I think this is marked by you. We will mark this plaintiff's—

Mr. Mitchell: This is way back in April 1951.

Mr. Corinblit: Way back April 6, 1951.

Mr. Mitchell: Yes, and you jumped from 1950 to 1951, and I just wanted—

Mr. Corinblit: We will mark as Plaintiff's exhibit next in order a memorandum from Taylor to Kaufman dated April 6, 1951, a letter.

The Clerk: 86 for identification.

(The document referred to was marked as Plaintiff's Exhibit No. 86 for identification.)

Q. (By Mr. Corinblit): I will show you Plaintiff's Exhibit 86 for identification and ask you if that refreshes your recollection that you sent Mr. Lehman's letter to your attorney in New York.

A. Yes. [3059]

(Testimony of Alfred R. Taylor.)

Q. And you told your attorney in New York that you understood that a lawsuit was to be filed on behalf of the Paradise Theatre, did you not?

Mr. Mitchell: If you want to read the letter into evidence—if you want to introduce the letter, that is one thing, but there isn't any record here that he talked with his attorney. I suppose he sent the letter.

Q. (By Mr. Corinblit): Does that refresh your recollection that you wrote to your attorney in New York and told him that you understood a lawsuit was to be filed?

Mr. Mitchell: I object to the last part of the question on the ground the letter is the best evidence. If he wants to use the letter he may do so.

The Court: The letter is the best evidence. The objection is sustained. You can read the letter if you wish.

Mr. Corinblit: There will be another time, because it doesn't fit in with the time schedule here.

Q. (By Mr. Corinblit): But, Mr. Taylor, after you sent a copy of the letter to Mr. Kaufman—that is, when did you have any discussion about the making—strike that.

Did you have any discussion about the making of a memorandum? A. No.

Q. You had no discussion about the making of a memorandum at all? [3060]

A. No. You can go through all the records and all the bidding situations and the memorandum is identical.

(Testimony of Alfred R. Taylor.)

Mr. Corinblit: I don't seem to be able to put my hand on the particular memorandum that I want.

Q. Mr. Taylor, I want to turn for a minute to your circle plan. A. Yes.

Q. The first circle you drew was between the Paradise—around the Paradise, Loyola, La Tijera and Centinela Drive-In.

A. That is because I started over at one end.

Q. All right. Why did you draw that circle just around those theatres?

A. When do you mean, today?

Q. No, in 1950.

A. In originating the plan?

Q. Yes.

A. Well, it was our plan to attempt to arrive at some conclusion of playing two runs in Inglewood simultaneously, and the circle plan was the best plan that we were able to devise.

Q. Well, why did you draw this circle around only these theatres and not around the other theatres? For example, why didn't you draw your circle to go around the downtown Inglewood houses, your first circle? [3061]

A. Well, because we felt that the Paradise, Loyola and Centinela and La Tijera, plus those downtown houses, the Ritz, Fox, United Artists, the Academy and the Fifth Avenue were all in substantial competition if they were playing the same picture.

However, we were trying to devise a plan to sell two runs in the Inglewood area rather than one, so

(Testimony of Alfred R. Taylor.)

that seemed to be a logical conclusion, that we would take one run in the Paradise, La Tijera, Centinela or Loyola areas and one some place else.

Q. Well, now, why didn't you draw the first circle around all of the group of theatres? Why did you only draw one circle around these four theatres?

A. Well, I just finished explaining it to you. In my opinion we were going to take two runs and of the many plans that we had tried to devise that seemed to be the most intelligent.

In fact, we asked all of the exhibitors in the territory if they could come up with a better solution to the problem. And if they could we would be very happy to consider it and that included Mr. Schreiber of the Paradise.

Q. Now, under your plan, just looking at the first circle. A. Yes.

Q. If the La Tijera won the picture it would get [3062] clearance over the Paradise, isn't that right?

A. The La Tijera was awarded the picture—if the La Tijera was awarded the picture they would have clearance over all of the theatres in their own circle, which included in that case the Centinela, the Paradise, the Loyola, the Fox and the Ritz and the United Artists, the Academy and the Fifth Avenue.

Q. Well, let us talk about these things circle by circle, if you don't mind.

A. You can't talk about them circle by circle because that is the basic problem. That is just like

(Testimony of Alfred R. Taylor.)

leap-frogging or any clash—they clash one with the other.

Q. All right. Let us talk about the Paradise for a minute. A. All right.

Q. If the Paradise won the picture it would get clearance over the La Tijera?

A. That is correct.

Q. And no other theatre, isn't that right?

A. Well, it shouldn't be said in that sense—"no other theatre."

Q. Other than the Centinela and the Loyola if they are involved.

A. That is right, but it permitted the Academy or the Fifth Avenue or the Fox or the Ritz or the United Artists to [3063] play day and date with the Paradise, but if we awarded it to one of those theatres in the second circle it gave the Paradise a like opportunity.

Mr. Corinblit: I move to strike the answer as non-responsive. I am asking a simple question. I am asking simple questions one by one.

The Court: It may go out.

Q. (By Mr. Corinblit): Now, Mr. Taylor, just this question: If the Paradise won the picture it would get clearance over the Loyola, the La Tijera and Centinela and no other theatre, isn't that right?

A. That is correct.

Q. It would get clearance—strike that. It would not get clearance over the theatres in downtown Inglewood—the Fox, United Artists and Inglewood.

(Testimony of Alfred R. Taylor.)

A. They would not, but, contrarywise, they would not get clearance over the Paradise.

Mr. Corinblit: May the second portion go out?

Mr. Mitchell: That explains the thing.

The Court: The latter part may go out. It wasn't necessary to add the latter part of the answer.

Mr. Mitchell: Your Honor, I don't see how you can understand asking and requiring a witness to answer the question yes or no when a plan is as complex as this is. It does not get to the truth, and I think he should be allowed to explain. [3064]

The Court: He was asked what was the effect upon the Paradise Theatre, and he wasn't asked about the effect upon any other theatre at all. It was a voluntary statement.

The Witness: It has an effect on the Paradise Theatre, your Honor, because it allows the Paradise to play free and clear also. [3065]

* * * * *

Q. (By Mr. Corinblit): Mr. Taylor, I have two preliminary matters I want to discuss with you.

You testified yesterday on direct examination about Paramount in 1952 wanting to follow the examples—that is, it was only in 1952 that you decided to follow the examples of decentralization including things like following the department stores.

You mentioned Bullock's. I wonder if you had the same decision about following the department stores like the Broadway?

A. Yes. We had the general idea that they were

(Testimony of Alfred R. Taylor.)

attempting to bring a greater amount of their potential merchandise to a greater number of their potential customers.

Q. Did you know that the Broadway was in Westchester in 1950 and 1951?

A. I don't believe they were. I believe it was Millirons, if I remember correctly, but there was no particular area involved.

We just noted that they were attempting to build in other areas.

Q. Now, with respect to this matter of substantial competition, Mr. Taylor, it is your opinion, is it not, and it was the opinion of Paramount as follows, that if on Hollywood Boulevard the Chinese Theatre was playing a Metro picture and the Paramount-Hollywood Theatre was playing a Paramount picture, those two theatres on the dates that those pictures were played opposite each other would not be in substantial competition with each other?

A. That is correct for the reason that in our opinion theatres are built on the basis that there is a substantial number of customers or enough customers to take care of both of them. [3071]

Now, it is true that the Chinese Theatre in Hollywood and the Paramount Theatre in Hollywood are a block apart. Right now one of those theatres is playing *The King And I* and the other is playing *That Certain Feeling*.

Now, you determine that you are going to a theatre. You may be standing between the two. So you

(Testimony of Alfred R. Taylor.)

make a choice as to which way you wish to go. Maybe you finally decide to go to see *The King And I*.

Now, we don't believe in that sense that those two theatres are in substantial competition because generally speaking they play more than one week and although on this particular occasion you chose to go to the Chinese Theatre and see *The King And I*, the fact remains that later in the week or next week you may decide to go to see *That Certain Feeling*.

So, we don't, in our opinion, consider those theatres to be in substantial competition if they are playing separate pictures. [3072]

Q. If the Loyola Theatre were playing a Fox picture and the Paradise Theatre were playing a Paramount picture on the same day, for the same week, it would also be your testimony, I am sure, that those two theatres would not be in substantial competition, isn't that right?

A. That is correct for the same reason.

Q. So that your position is and Paramount's position was in 1950 and 1951 that two theatres are not in substantial competition with each other, located one to three blocks away from each other, if they are not playing the same picture?

A. Not necessarily one to three blocks, Mr. Corinblit. Every situation is an individual problem.

Q. All right.

A. We attempt to determine the situation based upon the factors.

Q. Let's follow it through then. The Paradise

(Testimony of Alfred R. Taylor.)

Theatre, if it were playing a Paramount picture, and the Academy Theatre, if it were playing a Fox picture, would not be in substantial competition?

A. That is correct, in my opinion.

Q. And the Paradise Theatre, if it were playing a Paramount picture, and any theatre in downtown Inglewood or the La Tijera, were playing a Fox picture, would not be in substantial competition?

A. That is correct, in my opinion. [3073]

Q. And your same opinion is true with respect to the Paradise and the Southside, if they were playing different pictures?

A. That is correct.

Q. The same thing is true with respect to the Academy and the Southside, if they were playing different pictures, they would not be in substantial competition? A. That is correct.

Q. When you state that that was your opinion, that was the opinion and the policy of Paramount in 1950 and 1951, is that right?

A. Well, I don't know about——

Mr. Mitchell: There isn't any policy to be followed.

The Court: It is already answered that that was his opinion and the opinion of his company.

Mr. Corinblit: Thank you, your Honor.

Q. Now, turning your attention to the period in March 1950, March or April 1950, do you remember Mr. Schreiber came to see you and Mr. Smith about getting pictures for the Paradise Theatre, both on

(Testimony of Alfred R. Taylor.)

the first run, and if he couldn't have it on first run, on 7 day?

A. I don't recall the actual date, but I know we had two visits with Mr. Schreiber with reference to that problem.

Q. On the 7 day availability, you told him he would [3074] have to bid and you enumerated the theatres he would have to bid against?

A. That is correct.

Q. At that very moment, that is March or April 1950, the way in which pictures were being licensed, Paramount pictures, on the 7 day availability in the Inglewood-Westchester area, was that as far as Paramount was concerned, you had a bidding set-up, but only Fox was bidding for your pictures, isn't that right?

A. That is correct. We started the bidding system based on a request of the La Tijera Theatre. Then subsequently the bids reduced themselves to the fact that we were only getting bids from the Academy Theatre.

In April of 1950, the bidding commenced with severity again and we were getting bids from all of the theatres again.

Q. That didn't happen, that is, that didn't happen until the Paradise told you that they wanted pictures for 7 day availability, isn't that right? They told you about that in March, and this only happened in April, isn't that right?

A. I don't know anything about that, Mr. Corinblit. There is no doubt in my mind that the exhibi-

(Testimony of Alfred R. Taylor.)

tors in the Inglewood area had some understanding between each other to split product between them. Now, basically, I don't see anything wrong with that as long as those exhibitors are not discriminating against another exhibitor. [3075]

Personally, if I had my choice, I would prefer to go into Inglewood and choose a theatre in which I preferred to play my pictures and say, "I want to play my pictures in X theatre in Inglewood," because I believe that if I knew that I had a home all the time for my pictures in the same theatre, that I would be better served.

I believe the exhibitor would be better served, because it is important to the exhibitor that he have a consistent flow of quality product, and if he knew that he was always going to have Paramount pictures, he would be better off.

That is what I would choose to do if I had my way about it.

Q. All right.

A. But when you have one item and two or more people desire that item, then it is not possible to do that. The best way for us to keep ourselves out of any difficulties is to give all a fair and equal opportunity.

Q. Now, you say you have no doubt in your mind that as of that time there was a split of product among the exhibitors in the Inglewood-Westchester area on the 7 day availability, isn't that right?

(Testimony of Alfred R. Taylor.)

Mr. Mitchell: That time will have to be defined, because it didn't exist after April.

Q. (By Mr. Corinblit): As of the moment Mr. Schreiber walked into your office and asked you for 7 day pictures. [3076]

A. Mr. Corinblit, I don't know anything about that. It happened before Mr. Schreiber came in, to my recollection, and it was long before the Paradise Theatre ever opened.

Q. And it was in effect as of the time Mr. Schreiber discussed the matter with you in your office, isn't that right?

Mr. Mitchell: Let's fix the dates of these discussions. I see one memorandum in April 1950. It apparently was not in effect at that time. One memorandum shows there was a discussion with George Smith, Al Taylor, and Max and Alex Schreiber on April 12th. [3077]

The Court: May I ask this witness a question?

Mr. Corinblit: Yes, your Honor.

The Court: Assuming that you were convinced that in a community the exhibitors had gotten together and arranged for a split of product. Under those circumstances, as a distributor, what would you have done about it?

The Witness: Well, if they assigned me, if you might call it that, if the exhibitors assigned me to an inferior theatre and I objected to playing my pictures in that inferior theatre, I would refuse to sell them.

(Testimony of Alfred R. Taylor.)

The Court: You would just boycott the community?

The Witness: Well, I would make every effort to sell my pictures but if they were going to put me into an inferior theatre and my pictures in my opinion were entitled to play that theatre—if in my opinion my pictures were not entitled to play that theatre, I would just flatly refuse to sell them until they worked out some plan that gave me proper representation.

The Court: Supposing you went into a community and there were three theatres, and you determined in your own mind that the three theatres, the operators of those three theatres, had gotten together and agreed upon a split of product. You put your pictures out for bid. You only got an acceptable bid from one theatre. You gave them all an opportunity to bid but because they had an agreement among [3078] themselves only one theatre bid on your product. What could you do about it?

The Witness: Well, I could refuse to sell the picture, reject the bid. However, this is a barter business and each picture is sold separately and I would have to determine what I would do about it based upon the facts at hand.

If I felt that those three exhibitors were assigning me to a specific theatre and that was the best I could do, I may determine to take that deal. It all depends upon the individual circumstances.

In this particular situation my pictures were

(Testimony of Alfred R. Taylor.)

playing in the Academy Theatre and I had no objection.

I think the great danger in this is whether the exhibitors get together to discriminate against another exhibitor, but there is no evidence of this because the Paradise, if that is the theatre referred to, was not in existence at the time and, secondly, in April apparently these exhibitors had some sort of a misunderstanding and the bidding commenced again very spiritedly.

Q. (By Mr. Corinblit): Now, would you tell us, Mr. Taylor, what were the other terms of the split of product in the Inglewood area at that time?

A. I don't understand your question.

Q. What was the split? Describe it. You got Paramount product and where did the other pictures go? [3079]

A. I tell you I don't know where they all went.

Q. You didn't know that at that time?

A. No. I was getting my—I was sending out my bids and my bids were coming in only from the Academy Theatre.

Q. Only from Fox? A. That is right.

Q. United Artists wasn't putting in any bid?

A. Well, now, I couldn't say that they didn't put a bid in on every picture. I don't know. But generally speaking, going over the list of pictures for a period of time, I received only one bid in the main. Now, there may have been exceptions.

Q. And the La Tijera and the same thing was

(Testimony of Alfred R. Taylor.)

true—the same thing was true with respect to the La Tijera. They didn't bid?

A. No, not until April 1st.

Q. Until when did you say?

A. Around April 1st. We noticed that the bidding became quite spirited again.

The Court: When you say April 1st, was this April 1st before the Paradise Theatre was opened?

The Witness: Yes, sir.

Q. (By Mr. Corinblit): But it was after you had discussed with Mr.—it was after you had had certain correspondence with Mr. Schreiber about him wanting pictures for the Paradise [3080] Theatre, isn't that right? Because that correspondence began in February 1950?

A. Well, I don't know anything about that as far as the theatre was concerned. When the Paradise opened, we sent a request for offers like we did the others and he had an equal opportunity with all the rest of them.

Q. Let me show you again what I think you looked at yesterday, Exhibit A-1. A. Yes.

Q. Which is a letter of request to you for pictures for the Paradise Theatre on February 6, 1950? A. Yes.

Q. So that was the time when the Paradise asked you for pictures?

A. Yes, this was the first letter.

Mr. Mitchell: He asked for first run in that letter. Let him read the letter. It is first run and nothing is said about 7 days.

(Testimony of Alfred R. Taylor.)

Mr. Corinblit: If that is so, do you want to make some change?

The Witness: Does he say 7 days in here?

Mr. Corinblit: No. Do you want to make a change in your testimony?

The Witness: That is different. I thought it included both 7 days and first run. [3081]

The Court: May I insist, Mr. Corinblit, and the witness, that you do not overrun each other.

Now, we are having a lot of that, and we want our reporter to last out this case and he won't if you both talk at once.

The Witness: All right, sir.

Q. (By Mr. Corinblit): Let me show you, Mr. Taylor, Defendants' Exhibit—Plaintiff's Exhibit 69-B, the cut-off card of the Academy Theatre and call your attention to the picture played, Dear Wife.

A. Here it is right here.

Q. Yes. Dear Wife. That played in March, March 22nd to March 28, 1950.

Mr. Mitchell: I object to the question upon the ground when the picture played is immaterial with respect to—Mr. Corinblit is trying to develop—it is when the picture was bid for we are talking about and not months later when the picture played.

The picture may have been bid for back in January and played in March so the question is immaterial.

The Court: I don't think there is a question pending yet. I don't think Mr. Corinblit got the

(Testimony of Alfred R. Taylor.)

question out. If he did, I didn't understand the question.

Q. (By Mr. Corinblit): Mr. Taylor, the question is, *Dear Wife* played March 22nd to March 28, 1950, did it not? [3082] A. Yes, sir.

Mr. Mitchell: I object to that as being immaterial.

The Court: Objection overruled.

Q. (By Mr. Corinblit): Now, the picture *Paid In Full* played May 19 to May 30—May 19 to May 23, isn't that correct? A. Yes.

Q. And that picture you sold on a flat rental of \$750? A. Yes.

Q. Now, Mr. Taylor, do you remember when Mr. Schreiber came to see you?

A. No, I do not exactly.

Mr. Corinblit: Will you stipulate with me the date on that was April 12th?

Mr. Mitchell: That is right. It was April 12, 1950.

Mr. Corinblit: Thank you.

Q. Now, Mr. Taylor, having in mind that date when Mr. Schreiber came in to see you, did you tell him that in the Inglewood area there was a split of product involving Paramount pictures?

A. No.

The Court: Wait a minute. That is not right, Mr. Corinblit. There was no split of product as far as the distributors were concerned. The split of product we are talking about [3083] was a split of product on the part of the exhibitors.

(Testimony of Alfred R. Taylor.)

Mr. Corinblit: Now, your Honor, that I respectfully—

The Court: You say “a split of product.” Now, if you ask the question: Did you tell Mr. Schreiber that the exhibitors had gotten together and there was a split of product” from the exhibitors’ standpoint, the question would be all right, but now you are assuming that there was a split of product as far as Paramount is concerned and Paramount evidently said they thought about it and that it was there, but they went along with it. [3084]

Mr. Corinblit: Now, your Honor, I must respectfully say that this is a question for the jury to decide, I take it, and that is not the plaintiff’s position. There is no question about it that there was a split of product between the exhibitors.

The Court: The only thing I want, Mr. Corinblit, is I want you to ask a fair question, and I want you to insert in that question the elements. You have used split of product. You have included everything.

Mr. Corinblit: Well, now, your Honor—

The Court: Break it down into two questions, if you want to.

Mr. Corinblit: All right.

Q. Mr. Taylor, you did not tell Mr. Schreiber in April, 1950, when he came in to see you that there was, or just prior thereto had been some arrangement in the Inglewood-Westchester area between exhibitors affecting Paramount pictures?

(Testimony of Alfred R. Taylor.)

A. No. I would have no reason to tell him. In the first place——

Mr. Corinblit: I move to strike that portion of the answer, your Honor, after “No.”

The Court: Everything after “No” may go out.

Mr. Corinblit: Thank you.

Q. Now, Mr. Taylor, when did you first learn that Paramount product was subject to a split of product among the [3085] exhibitors in the Inglewood area? When did you learn that?

A. I don't actually know. I would say after a period of time, when four or five pictures were bid for and I received only a bid from the Academy Theatre, I would come to the conclusion that they had some sort of understanding between them.

Q. Now, you came to a conclusion that there was an understanding between what companies?

A. I don't know.

Q. What did you mean when you just said that there was an understanding between them? What did you mean by “them?”

A. The theatres to whom we were sending bid letters.

Q. That included what theatres?

A. All of the theatres we were sending bid letters to at that time.

Q. That included United Artists Theatre?

A. Yes.

Q. La Tijera, Imperial Theatre, did it not?

A. Yes, sir. As I said, that is nothing unusual

(Testimony of Alfred R. Taylor.)

in our business. That is a common everyday occurrence, and it is perfectly all right with us.

Q. You say it is perfectly all right with you? In your opinion, Mr. Taylor, do you think that a sliding scale terms for Paramount pictures on the 7 day availability are perfectly agreeable?

A. Well, as I told you, Mr. Corinblit, this is a barter [3086] business. There is no price established for anything and you negotiate with the exhibitor for whatever terms you can secure.

When the exhibitor makes you an offer, it then becomes your job to determine whether or not you will accept that deal.

I have no objections to a sliding scale in certain places. Sometimes I take the sliding scale when I don't care to take it, but I have arrived at the conclusion it is the best that I can do under the circumstances and it is better for me in behalf of my company to accept the deal which I can secure from an exhibitor.

Q. Was that your situation in the fall of 1949 and early 1950, that you were taking a deal from the Academy because it was the best you could do?

A. On what?

Q. On 7 day availability.

A. You mean on particular pictures?

Q. Yes. You have the cut-off card in front of you, Mr. Taylor. Just tell us whether you notice that the basic terms used for your pictures that the Academy gave you were 20 to 40 per cent sliding scale.

(Testimony of Alfred R. Taylor.)

A. Yes. I accepted that. In my judgment, it was the best deal I could secure for my company.

Q. Do you think that was fair and reasonable?

A. Well, I don't object to a sliding scale. I consider [3087] it to be fair and reasonable. Naturally, instead of 20 per cent, I would like to have 25 per cent, and if I had 25 per cent, I would like to have 30, and if I could have 30, I would like to have 35, but under the sliding scale we had an opportunity to earn, if the gross was good, so the sliding scale has its advantages and disadvantages.

Q. Did you have an opinion in 1949 and early 1950 that those terms, 20 to 40 per cent sliding scale, were fair and reasonable for Paramount pictures on the 7 day availability?

Mr. Mitchell: I object to that as being immaterial, your Honor. We are not trying 1949 and early 1950, whether Paramount got a good price or not. It is immaterial.

The Court: Overruled.

The Witness: Could I have the question again?

The Court: Read the question.

(Question read.)

The Witness: In my opinion when a deal is proposed to me, I either accept it or reject it. Even though the terms may appear to be unreasonable, in my judgment I have to decide whether I want the deal or whether I don't want it.

On Top of The Morning, which was a Bing Crosby picture, I was offered 20 to 40 per cent, and I was offered a percentage, I believe it was 50 per cent

(Testimony of Alfred R. Taylor.)

over the 40 per cent figure. To me it was a reasonable offer. I would like to have more, but I couldn't get it, so I took it. [3088]

Q. Then it was your opinion that the 20 to 40 per cent sliding scale was reasonable on your pictures in 1949 and 1950?

A. We always go on the premise we never get enough money for our pictures. I am trying to show you this is a barter business and someone has to make a decision. That is all the exhibitor would offer us. I have two choices. I can either sell him the picture or I can stay out of the town. He offered me the 20 to 40 per cent. In my opinion, the sliding scale in the Academy Theatre was reasonable. So I accepted the deal in my business judgment as in the best interest of the company.

Q. Do you know what factors went into the expense figure on which that sliding scale was based?

A. Our sliding scales with Fox have nothing to do with expenses. They are based solely on grosses.

Q. In 1949 and 1950, was that true?

A. It has been for years.

Q. It had nothing to do with expenses at all?

A. As I described, again this is only a barter business. The exhibitor attempts to build up his expenses as high as he possibly can. The exhibitor is always losing money and the distributor is always losing money in this business, I mean that is part of the parlance of the business. The conversations you have back and forth are always that. So the [3089] exhibitor in computing the sliding scale

(Testimony of Alfred R. Taylor.)

attempts as best he can to increase his expenses, because the more he increases his expenses, the higher the scale and the less we earn.

So in bartering between us, we attempt to reduce the scale as much as possible, and he attempts to keep it up as much as possible.

Q. My question to you, Mr. Taylor, was whether you know what elements of expense went into that sliding scale?

A. No, because I said our expenses are based on the—our scales are based on grosses, and we never look to the expenses.

Mr. Corinblit: I move that portion of the answer be stricken after the word "No."

The Court: Denied.

Q. (By Mr. Corinblit): Mr. Taylor, when the Paradise people, when the people from the Paradise Theatre came to see you and had a conference, which was stipulated to be April 12, was it about that time that you promulgated what you called the circle plan? Is that right?

A. We devised that system as the most intelligent way to approach the problem that we had to face and meet.

Mr. Corinblit: I move to strike the answer as not responsive. My question, was it at that time you used the circle plan?

Mr. Mitchell: I would like, since the record shows [3090] otherwise as to date, I would like to have the witness check as to the date when the circle plan was put out.

(Testimony of Alfred R. Taylor.)

The Court: Well, let's strike the question and answer.

Mr. Corinblit: All right, sir.

The Court: Start all over again and establish the date.

Mr. Mitchell: Let's get the date of the circle plan, because it was not at that time. If you want to stipulate, as I did with you, as to the date of the conference, the date of the circle plan was in June, 1950.

Mr. Corinblit: Well, now, Mr. Mitchell, you know Mr. Taylor was telling Mr. Schreiber about the circle plan when he came in on April 12.

Q. Do you remember that, Mr. Taylor? You are the witness, so you testify. When were you working on the circle plan?

A. I don't know, but it was some period of time before. I don't recall exactly.

Q. In other words, it might very well have been in April, 1950?

A. Yes. Could have very well been.

Q. All right. Before I go on, there is one other thing I think I want to establish as of that time in 1950.

Mr. Mitchell: Which date? [3091]

Mr. Corinblit: April, 1950.

Q. (By Mr. Corinblit): As of that time, you were selling the Southside Theatre on the 7 day availability by negotiation, isn't that correct?

A. Well, I will have to refer to my memorandum.

(Testimony of Alfred R. Taylor.)

Q. All right.

A. According to our records, we sold the Southside a clear 7 day run from September, 1949 to February, 1950.

Q. To February, 1950? A. Yes.

Q. By a clear 7 day run, you mean a 7 day run by negotiation without bidding? A. Correct.

Q. Let's turn to this circle plan. Mr. Taylor, it would be correct, would it not, to describe the circle plan that you drew around the Paradise Theatre, Loyola, La Tijera and Century Drive-In, as a competitive circle? A. Not in that sense.

The Court: What do you mean by competitive circle? Let's get some definitions.

Mr. Corinblit: Your Honor, we will get to the definitions.

Q. I want to know if it is not a fact that you referred to that circle as a competitive circle.

A. No, I wouldn't say so. The problem was an overall [3092] one, Mr. Corinblit. All of the theatres in the Inglewood area, in my opinion, were competitive, and as far as I was concerned, I was solely responsible for the actions of the Paramount Company in Inglewood, and that is what we came up with.

Mr. Corinblit: Your Honor, I will move to strike the answer.

The Court: Let me just ask you a question. You say it is your opinion that the theatres were competitive in the Inglewood area.

(Testimony of Alfred R. Taylor.)

The Witness: That is correct, one upon the other.

The Court: Were they substantially competitive?

The Witness: If they were all playing the same picture in the great majority, yes. I would say that there is a question whether Southside and Paradise were substantially competitive, but that is not the problem in Inglewood.

The Court: I know, now. Wait a minute.

The Witness: All right.

The Court: My understanding is you consider all the theatres competitive, but they are not substantially competitive, unless they play the same picture at the same time.

The Witness: Well, that is true in our business. We don't consider theatres playing different pictures to be substantially competitive, because the theatres are constructed originally with the thought of being enough in number to take [3093] care of all the population.

The Court: If the theatres in any one of these circles were playing different pictures at the same time, you would not consider them competitive?

The Witness: No, sir. It is like the explanation that I gave once before.

The Court: I know, but I am trying to find out what you mean by competitive circle. That is what I am trying to find out.

The Witness: Could I explain by another business that possibly would illustrate with more clarity, if it is confusing to our business?

(Testimony of Alfred R. Taylor.)

Mr. Corinblit: Your Honor, I will——

Mr. Mitchell: He is asking the court a question now. Let's let the court permit him to explain.

The Court: Do you have any objection to permitting him to explain?

Mr. Corinblit: Yes, I do. At this time I would like to develop this in my own way, if I may.

The Court: All right, you go ahead and develop it in your own way.

Mr. Corinblit: Thank you, sir.

Q. This is a memorandum——

Mr. Mitchell: You understand, your Honor, he has only partially answered your question. He has been stopped [3094] from completely answering.

The Court: I understand, but attorneys sometimes resent the court trying to run the case for them, and maybe I do it too much. Mr. Corinblit wants to run his own case. I guess he has a right to run it.

Mr. Corinblit: There is certainly no resentment on my part, your Honor, but I would like to develop this point, if I may, in this way.

Q. (By Mr. Corinblit): I will show you, Mr. Taylor, Exhibit E-31 in evidence, which you testified, I think, was your memorandum. A. Yes.

Q. Now, E-31 reads as follows:

“Re Warpath, 7 days after first run Los Angeles, willing to accept two runs 7 day availability Inglewood from offers received. Mr. Smith approved forms of offer of Century Drive-In. In accepting this offer, unable to accept offer of Fifth

(Testimony of Alfred R. Taylor.)

Avenue, Centinela Drive-In, as they are in the same competitive circle. A. Yes.

Q. These are your words, aren't they?

A. Yes, sir.

Q. Same competitive circle. A. Yes, sir.

Q. Now, I want you to describe for me the theatres [3095] that were in the same competitive circle with the Century Drive-In, Fifth Avenue and Centinela Theatres.

A. Will you let me look at the map over there again? [3095a]

Q. Yes. You know those theatres, don't you? You know the competitive circle?

A. Yes, very well. Now, what is it you want to know?

Q. What theatres were in the same competitive circle with the Century Drive-In, the Fifth Avenue and the Centinela Drive-In Theatre or maybe there are two circles there.

A. There is two circles as it involves the drive-ins, but the theatres that are in the Century Drive-In circle are the Southside—not the Southside, pardon me, the Rio and the Imperial and the Academy and the Fifth Avenue.

Q. All right. Could we call that—well, just so we won't have any problem, let us call that "competitive circle No. 3."

And I am starting No. 1, the one over in the La Tijera circle and the second one, and I will call that No. 3. A. Yes.

Q. Competitive circle No. 3.

(Testimony of Alfred R. Taylor.)

Will you name those theatres again—well, I think we can agree on them. They are the Academy, Fifth Avenue and Century? A. Fifth Avenue.

Q. The Rio and the Imperial?

A. Century and the——

Q. Imperial. A. Rio and Imperial.

Q. Yes. Now, will you describe—name the theatres that are in the competitive circle No. 2?

A. No. 2?

Q. Right. All right.

Mr. Mitchell: Why don't you let him see the map so we will get it correct?

The Witness: The Academy, the Fifth Avenue, the Ritz, the United Artists, the Fox, the La Tijera and the Centinela Drive-In.

Q. (By Mr. Corinblit): The Academy?

A. Fifth Avenue.

Q. Fifth Avenue. A. The Fox.

Q. The Fox. A. The Ritz.

Q. Ritz. A. United Artists.

Q. U.A., Centinela Drive-In and the La Tijera.

A. And the La Tijera, right.

Q. Now, let us go to competitive circle No. 1. Do you want to take a look at the map?

A. No, I can recall those.

Q. I was sure you could.

A. There are only four of them. They are the Centinela Drive-In,—[3097]

Q. Competitive circle No. 1?

A. Paradise, Loyola, La Tijera and the Centinela Drive-In.

(Testimony of Alfred R. Taylor.)

Q. And finally competitive circle No. 4.

A. Was the Imperial, Rio and the Southside.

Q. Right. The Imperial, Rio and the Southside.

Now, what did you mean when you used the words "competitive circle No. 1," about describing a circle around the Paradise, Loyola, La Tijera and Centinela?

A. I don't exactly understand what you mean.

Q. Well, perhaps we can go a little further on that.

Turning to competitive circle No. 1—

A. Yes.

Q. —if the Paradise won a picture it would get clearance only over the theatres in circle No. 1, is that right?

A. That is correct.

Q. It would get clearance only over the Loyola, La Tijera and Centinela?

A. Yes.

Q. It would not get clearance over any other theatre in competitive circle No. 2?

A. That is correct.

Q. Except the Centinela and the La Tijera in its own circle? [3098]

A. That is right.

Q. No theatres in competitive circle No. 3?

A. That is correct.

Q. And no theatres in competitive circle No. 4?

A. That is correct.

Q. Now, for the purpose of clearance, these competitive circles were drawn for the purpose of clearance, weren't they?

Mr. Mitchell: How are we using the term "clear-

(Testimony of Alfred R. Taylor.)

ance?" That is important because there isn't any clearance in this case.

Mr. Corinblit: Mr. Mitchell has been saying that but the only trouble the witnesses have been using the word "clearance." They have been using the word either "priority of run" or "clearance."

The Court: Let us ask the witness what he means by "clearance."

Mr. Corinblit: All right, your Honor. We will ask him in terms of documents so we will get it clear.

Q. Now, I will hand you Plaintiff's Exhibit I-P-1, which is in evidence, and ask you if you recognize that signature as your signature, "A. R. Taylor." A. Yes, it is.

Q. And this is the letter that was sent out by you? A. Yes.

Q. All right. Now, I want you to look at the paragraph [3099] that reads as follows after you describe the plan—you described the four circles, did you not? A. Yes.

Q. And you say this: "The foregoing plan takes into consideration for the purpose of clearance——" A. That is right.

Q. "——those theatres which in our opinion are in substantial competition with each other."

A. Yes.

Q. Now, what did you mean by the word "clearance" as used in that sentence?

A. Well, it is probably not a proper statement. My definition of clearance is when a theatre closes

(Testimony of Alfred R. Taylor.)

the exhibition of a picture there is a lapse of time.

Q. May I stop you, Mr. Taylor.

Mr. Corinblit: Your Honor, may I move to strike the answer as non-responsive since I am asking the question what he meant by the term "clearance" in this sentence.

The Court: It may go out.

Mr. Corinblit: Thank you.

The Witness: Then I would say that "clearance" meant that the exhibitor had a priority of run or could play ahead of the following theatre.

Q. (By Mr. Corinblit): Thank you. That is what you meant by the word "clearance." All right. [3100]

Now, you say in this letter that "The foregoing plan takes into consideration for the purpose of clearance those theatres which in our opinion are in substantial competition with each other."

A. Yes.

Q. Now, you define clearance as including the element of priority of run.

Now, the Paradise had clearance or priority of run only over the Loyola, La Tijera and Centinela Drive-In, isn't that right? A. That is correct.

Q. So, therefore, you meant in that letter—you were saying in that letter that the Paradise was only in substantial competition with those three theatres. A. No, I didn't say that at all.

Q. Well, now, what did you mean, Mr. Taylor, when you said you were taking into consideration for the purpose of clearance—

(Testimony of Alfred R. Taylor.)

A. This is a general——

Q. Those theatres which were in substantial competition?

A. That was a general letter. It explained the plan for the Inglewood area which in my opinion is a sensible plan and is legitimate and as fair as we could come up with.

Now, you might think the plan that I devised stupid, but in my opinion, at least, it was honest and in the two years [3101] or so that we had the plan in effect we asked all the exhibitors in the area if they could come up with any other solution and none of them could.

This is a definition of our plan as best we could explain it to the exhibitors.

Mr. Corinblit: Your Honor, I move to strike that answer as non-responsive.

Mr. Mitchell: He is explaining what he meant, your Honor.

The Court: Motion denied.

Q. (By Mr. Corinblit): Now, Mr. Taylor, you drew some circles and you called them "competitive circles." Didn't you really mean when you were saying "competitive circles," didn't you really mean "substantial competitive circles?"

A. No. I did not mean that at all. We were simply attempting to solve a problem in Inglewood at the best means at our command and we came up with this circle system.

Now, as I said before, you might think it is stupid, but at least it is honest. Basically in my

(Testimony of Alfred R. Taylor.)

opinion I think there should be only one 7 day run in Inglewood and we had adhered to one 7 day run you wouldn't be asking me about that because we wouldn't have had two runs.

This was only an attempt upon our part to solve a product problem in Inglewood in taking two runs instead of one because of the number of theatres that had been added in [3102] Inglewood, and the plan was worked out as best we could work it out.

Q. Why didn't you put the Academy in the Paradise circle?

A. Why didn't we put the Academy in the Paradise circle?

Q. Yes.

A. Because we felt we should have two runs and they were sufficient apart that it wouldn't be unreasonable to have the Paradise and the Academy play day and date with two runs rather than one run in the area.

It is the best that we could come up with in the system that we developed.

Q. Now, Mr. Taylor, I am getting at your opinion in 1950 and not your opinion now.

A. I am not objecting, Mr. Corinblit. I said I am solely responsible for that system. I am not blaming anybody else—the home office or Mr. Smith or anybody else, and I can explain to you to the best of my ability.

Q. Now, with respect to your opinion in 1950, the fact is that in your opinion in 1950 the Academy was not in substantial competition with the

(Testimony of Alfred R. Taylor.)

Paradise and that is the reason you didn't include them in the Paradise competitive circle?

A. That is just not so. It is absolutely not so.

I consider the Academy and the Paradise in substantial competition. I always have and I still do. But as I told you [3103] before we were endeavoring to put two runs in Inglewood instead of one in an attempt to relieve a problem, and so we overlooked that problem—passed it by.

Q. Now, the fact is, not only with respect to the Paradise, Mr. Taylor, but with respect to each one of these competitive circles, a theatre only received clearance, including priority of run as you have defined it, over the theatres in its circle or circles, isn't that correct?

A. That is because we were taking two runs, Mr. Corinblit. Yes, that is true.

Q. That is true? A. Yes, that is right.

Q. And you used the language in your letter that you are taking into consideration for the purposes of clearance those theatres which "in our opinion are in substantial competition with each other." That is your language?

A. Yes, but I don't believe—doesn't it say something about the over-all problem in Inglewood?

Q. Well, I am referring to what you meant by that language, Mr. Taylor.

A. Well, I surely have been trying to explain it to you to the best of my ability.

I may be a knuckle-head but I am trying to show you that we had a problem in Inglewood, and we

(Testimony of Alfred R. Taylor.)

worked out this system as best we could. And as I say you may think it is stupid, [3104] but it is honest. That is one thing about it.

Q. Now, Mr. Taylor, under this circle plan, you notice this—that looking at the Paradise Theatre, the theatres over which it can obtain clearance are within about two miles of each other, is that right?

Mr. Mitchell: You are using “clearance” in Mr. Taylor’s sense?

Mr. Corinblit: Yes, that is right.

The Witness: I believe it is about two miles from the Loyola—I mean the Loyola and the Paradise to the La Tijera.

Q. (By Mr. Corinblit): If it played on the 7 day availability? A. Yes.

Q. Now, the Academy Theatre got clearance over the La Tijera, didn’t it? A. Yes.

Q. How far was that from the Academy?

A. Well, if I recall correctly, and I would be off only a few tenths of a mile, it is one and four or five-tenths miles from the Academy to downtown and I believe one and two-tenths miles to the La Tijera.

Q. So that is 2.6 miles? A. That is right.

Q. And the area over which the Academy got clearance to the south of it, to the Rio Theatre is how far? [3105]

A. I don’t recall exactly. I would say, just guessing, it would be around three miles.

Q. Three miles?

A. Something in that neighborhood.

(Testimony of Alfred R. Taylor.)

Q. But the theatre that got the most clearance as a matter of fact was the Academy, wasn't it?

A. I wouldn't say that.

Q. The theatre that got the most clearance over the most theatres was the Academy or Fifth Avenue?

A. Because they were mostly bunched in there. But if the Academy Theatre got clearance, it also meant that the United Artists and the Fox, the La Tijera and the Centinela had the same in that circle, other than the Rio and the Paradise.

Q. But the Academy got—the Fox Academy got clearance over more theatres than any other theatre in that circle, isn't that right?

A. Because there are more theatres in that circle.

Mr. Corinblit: I will move to strike the answer. You can answer the question "Yes" or "No," I believe.

The Court: It may go out.

The Witness: Yes, but there are more theatres in the circle.

Q. (By Mr. Corinblit): Now, when you set this plan up, Mr. Taylor, under the plan you put in—I will withdraw that. [3106]

Turning to the matter of prints for a minute. I think you testified that the prints, the black and white prints cost you somewhere between \$150 and \$200, or was there a larger figure than \$150?

A. I would say around—I don't know exactly,

(Testimony of Alfred R. Taylor.)

but I would say around from \$150 to \$250 at that time.

Q. Now, the average number of times that you use one print was about 70, wasn't it?

A. I would say that would be a fair estimate.

Q. So each print, the cost of each print per showing in terms of cost of the print was about \$2.00, isn't that right?

A. I don't know.

Q. Well, if you divide \$150 by 70, you get a little over \$2.00?

A. Oh, I see, yes. [3107]

Q. (By Mr. Corinblit): Per showing it is \$2.00?

A. Yes.

Q. Now, let's talk about your prints, Mr. Taylor. You had on the first run, when you started playing first run, I think you testified you had something like only 12 to 16 prints in the area generally.

A. What time are you referring to?

Q. 1950.

A. Yes, there were 12 to 15 or 16 prints, depending upon the quality of the picture.

Q. When you came to the 7 day run, would you pick up maybe five or ten prints?

A. It all depended upon the booking problem at that time. I would say sometimes yes and sometimes no.

Q. So that you might have on the 7 day availability, you might have as many as 25 prints in the office?

A. I would question that very much. It is possible, but I doubt it.

Q. Would you have as many as 20?

(Testimony of Alfred R. Taylor.)

A. I think that is a high number. I don't know. Each picture would be an individual problem.

Q. I think you testified under direct examination by Mr. Mitchell that on the first run when the pictures in 1950 and 1951 were playing day and date at the downtown and Hollywood theatres, and probably day and date in the San Pedro and [3108] Long Beach theatres, at the same time they were playing in other cities in the Southern California and Arizona territory, is that right?

A. Yes. I said we attempted to book them day and date in the towns where they had their own influence, their sphere of influence over the community, such as San Diego, Santa Barbara, Phoenix, Tucson, towns of that type.

Q. And that would include towns like Bakersfield?

A. Well, I can name them for you. Bakersfield, San Bernardino, Riverside, Pomona, Santa Ana, San Luis Obispo—I have left out a few, I imagine.

Q. Assuming that those prints opened up in those towns that you have mentioned, if they played a week, let's assume, also, the picture played a week first run, when they were through in Los Angeles and through in the other towns, you would hit the 7 day availability, wouldn't you?

A. Well, generally speaking, you find that in all of those towns you don't open at the same time, because they have pictures from other people. Sometimes they are a week late. Sometimes two weeks

(Testimony of Alfred R. Taylor.)

later. But we attempt to book them as quickly as we can along with the first run Los Angeles.

Q. Now, assuming that they were booked at approximately the same time. A. Yes.

Q. You would then hit the 7 day availability, isn't [3109] that right, after the first run?

A. That's right.

Q. You had all these prints and they were going on the 7 day availability, and when you came to the 7 day towns which were asking for prints at the same time that the Paradise Theatre was asking for prints for 7 day in the Inglewood-Westchester area, you were using prints for towns having a population as low as 2,000, while you were denying the Paradise Theatre a print, even though they had 40,000 people, isn't that right, within a two-mile radius?

A. Well, we didn't deny the Paradise Theatre the run because of their population. We denied it because we had a franchise in existence which in our opinion prohibited the Paradise Theatre from playing.

Q. Well, now, we are talking about 7 day availability.

A. I'm sorry. I thought you were talking about day and date.

Q. The question is whether at the very moment that you were denying the Paradise a print for a picture on the 7 day availability in Westchester, at that very moment prints were being used by your

(Testimony of Alfred R. Taylor.)

company on the 7 day availability in towns having a population as low as 2,000 people.

A. We didn't—

Mr. Mitchell: Just a minute. Wait a minute now. I object to that question on the ground it assumes a fact not [3110] in evidence. He says as a basis of his question that the picture was being denied to the Paradise. No such thing. There is no such evidence. In every instance the Paradise had a right to have that 7 day run, in every instance.

The Court: Maybe you'd better not use the word deny in your question. Substitute some other word.

Q. (By Mr. Corinblit): At that very moment that the Paradise was not playing 7 day availability in Inglewood-Westchester area, you were playing pictures on the 7 day availability in towns as low as 2,000 people, isn't that right?

A. Yes, but we were playing somebody in Inglewood on the 7 day availability, generally speaking, of which the Paradise had an opportunity.

Mr. Corinblit: Your Honor, I will move to strike everything after the word "Yes."

The Court: It may go out, everything after the word "Yes."

Mr. Corinblit: Thank you.

Mr. Mitchell: Your Honor, I don't see why he can't explain his answer. Mr. Corinblit is trying to create an impression here, and the witness has a right to explain his answer in such a way as to defeat the insinuation.

The Court: Mr. Mitchell, that's all we have been

(Testimony of Alfred R. Taylor.)

doing for the last 20 odd days, is trying to create an impression, [3111] an impression not upon the court, but upon the jury. I don't understand it. It is beyond my comprehension how this jury is going to remember all the facts and the figures and the immense detail of this case. They are going to decide this case probably upon impression, and that is what you have been trying to do, to create an impression upon the jury for your part, and Mr. Corinblit, also.

Mr. Mitchell: Then doesn't the witness have a right to explain his answer so as not to permit the jury to get the impression which he thinks is improper and which I think is improper, and not force him to answer a question yes or no, so he cannot explain his answer?

The Court: It is 11:00 o'clock and we will take our morning recess.

Ladies and gentlemen of the jury, again it is my duty to admonish you you are not to discuss this case with anyone, you are not to allow anyone to discuss it with you, and you are not to formulate or express any opinion as to the rights of the parties until this case has been finally submitted to you.

With that admonition, court will not stand in recess until 11:15:

(Recess.)

The Court: Stipulate the jury is present in the box? [3112]

Mr. Corinblit: So stipulated, your Honor.

Mr. Mitchell: Yes.

(Testimony of Alfred R. Taylor.)

The Court: Ladies and gentlemen of the jury, we have had a considerable difficulty in this case, as we do in all technical cases, on the question of definitions, words. We use words and we understand what we are saying. Other people may get a different impression as to what we mean.

For instance, in this case we have had a definition of substantial competition. This witness has given his understanding of what is meant by substantial competition. It differs considerably from the definitions as given by others.

You remember we had an expert on the stand the other day and he gave us a definition of what he meant by substantial competition.

It is one of these things that everybody in the industry understands and knows, but they can't explain.

So we have a great deal of difficulty in definitions, in determining the use of words or the meaning of words to be used.

Now, a little while ago when I was talking to Mr. Mitchell, I said that the jury is going to decide this case upon impressions. Well, that word impressions is subject to several different interpretations and I don't want you to get the wrong interpretation.

You are to decide this case upon the facts and the [3113] evidence, but you are the ones who are going to determine what the facts are and the inferences that can be drawn from those facts.

Now, you see the witness, you notice how he testifies, you notice his demeanor upon the stand. You

(Testimony of Alfred R. Taylor.)

get an impression from watching the witness as to whether or not you can rely upon his testimony, whether or not he has been contradicted in any way. It is an impression that you get that is perfectly legitimate as to the credence you can place upon the testimony of these various witnesses.

Now, you are to decide this case upon the facts, but from the facts you are to get the impressions I have been talking about. From hearing all the facts, you then come to a conclusion—let's not use the word impressions at all—you come to a conclusion, without being able to pinpoint it upon any particular one bit of evidence, but upon all of the evidence, that there has been or has not been a conspiracy, or there has or has not been any other question you are called upon to resolve.

So I don't want you to get the idea that you are not to decide this case upon the evidence. You are. But you are the ones that are going to evaluate the evidence, you are the ones who are going to determine whether or not, from all the evidence and all the circumstances, the testimony of all the witnesses, whether there has or has not been a conspiracy, and [3114] whether the plaintiff has or has not been damaged.

So I hope you don't get the wrong impression from my use of the word impression.

All right. You may proceed.

Q. (By Mr. Corinblit): Mr. Taylor, yesterday you testified about an exhibit, Defendant's Exhibit K. I would like to place Defendant's Exhibit K be-

(Testimony of Alfred R. Taylor.)

fore you. With respect to that exhibit—first, let me ask you this question.

In licensing your pictures, licensing Paramount pictures, the final approval of the contract is in New York, isn't that right, and was at this time?

A. With the exception of contracts involving bidding situations, the approval was actually in the right of Mr. Smith, who was then my division manager.

Q. But as far as actually having a contract—let's talk about negotiating, then, for a minute. Suppose a picture was negotiated, instead of bid, as far as having a contract, you didn't have a contract until it got to New York and was approved there, is that right?

Mr. Mitchell: Just a minute.

The Witness: That is not correct.

Q. (By Mr. Corinblit): You say that is not correct?

A. That is not correct insofar as bid situations are concerned. Regardless of whether a picture was bid for or negotiated, in a bid area the right of approval was solely in [3115] our office.

Q. In the bid area it was in your office. I take it that it was true, as far as Paramount was concerned, until you put your name or Mr. Smith put his name on the contract, you did not have a deal, is that right?

A. Actually, when the bids were received, I evaluated the bids and went into Mr. Smith, generally—he was not always in town—and we discussed

(Testimony of Alfred R. Taylor.)

it and arrived at a conclusion as to which of the bids we would take. We then generally notified the exhibitor by telephone, or told the booker, and he would contact the exhibitor and tell him he could book the picture, if he so desired.

Q. Let's talk about a situation where you negotiate a picture, and isn't this correct. Assume that a salesman negotiates a picture in the area. He discusses the matter with the exhibitor. He finds out what the exhibitor is willing to pay under all the circumstances. He comes back to you. If you approve the deal, you immediately thereafter send out a contract form to the exhibitor. He fills it out, sends it back to you, and you sign it here, and when you sign it, you have got a contract, is that right?

Mr. Mitchell: Well, now, that calls for a conclusion of the witness, your Honor. He just said he notifies them, and it may be, as a matter of law, as a matter of fact it is so as a contract when he notifies them. It calls for a conclusion [3116] of the witness.

The Court: What difference does it make?

Mr. Corinblit: This makes a difference in some examination I propose to carry out here.

The Court: Well, you are coming into another field in which everybody seems to know what they are talking about but there is quite a difference in opinion. I don't know when they had a contract. They might have had a contract if they said yes over the telephone, and they didn't have to have a signature. If you want to know if they had a for-

(Testimony of Alfred R. Taylor.)

mal agreement, yes. If there is a formal contract, then they didn't have a contract until after all the parties signed. But in the meantime the parties might have got certain rights that they could enforce through the law, even though the contract was never signed. [3117]

Mr. Corinblit: Well, I didn't want to get into an ambiguity problem if I can avoid it.

Q. (By Mr. Corinblit): I show you Plaintiff's Exhibit 69-B. A. Yes.

Q. Now, you have actually got a place on the form, 69-B—that is a Paramount record, isn't it?

A. Yes, sir.

Q. That is your company's record?

A. Yes.

Q. And on this form you have got some entries here—you have an entry called "date of contract," isn't that right? A. Yes.

Q. Now, what does that "date of contract" on your form mean?

A. That is the date that the girl typed the contract up and the date appears on the contract form itself.

Q. And then you have a line, "date approved."

A. That is right.

Q. What does that mean?

A. That means the date it was approved by the home office.

Q. Home office. In other words, you send these contracts pursuant to which an exhibitor gets a pic-

(Testimony of Alfred R. Taylor.)

ture? You send these contracts back to New York for approval? [3118]

A. Well, you must separate them, Mr. Corinblit. You must separate them. You have two situations.

You have bidding areas and you have non-bidding areas.

Now, we have no right of approval of any contracts negotiated in a non-bidding area, but we had the sole right to approve bids, no matter how they were disposed of, in bidding areas.

Q. Well, now, Inglewood-Westchester was a bidding area, was it not? A. That is right.

Q. And starting with 49 and 50 you were bidding during the time indicated by this cut-off card, which is a part of Exhibit 69-B, isn't that right?

A. That is correct.

Q. And your card and this cut-off card for 1949-50, and I will go to the '50-'51 season in a minute, has an entry for every single picture showing the date of the contract and the date approved, isn't that right? A. That is correct.

Q. So you follow the same procedure in this territory as you followed generally. You had a contract. You typed it up. You sent it to the exhibitor. He sent it back to you and you sent it to New York and it got approved, isn't that right?

A. That is correct. [3119]

Q. And that is what you did in the Inglewood-Westchester area in 1949-50 and in 1950-51?

A. That is correct, but the right of approval was

(Testimony of Alfred R. Taylor.)

in our office. We didn't have a separate form for bidding and the home office has to know what is going on, so we sent the contract through in the normal course of our daily routine, but the right of approval was solely in our hands and always has been.

Q. But turning to your contract form, and I will be glad to pull one out—is there a form here? I don't know. But you know that your form says that there is no contract unless it is signed in New York, don't you? That has been on your form for probably 35 years.

A. It is a standard factor that the exhibitor has a right to withdraw any deal prior to its approval.

Q. And under that form—as a matter of fact, it says there is no contract until approved in New York, isn't that right?

A. That is correct, but as far as the bidding situations are concerned—it was something new to us because nobody thought of changing it in so far as Los Angeles was concerned.

Los Angeles, I believe, was one of the two places in the United States where the bids were approved locally. The other was Chicago. [3120]

So, under our normal operation all bidding went into New York for approval with the exception of those two places.

Q. But you are not changing your testimony that the contracts which resulted from the bid went to New York for approval?

A. If they were bidding under normal circum-

(Testimony of Alfred R. Taylor.)

stances they went to the home office and they approved them, but they were approved by Mr. Smith and myself because our letters to New York show that—if you will get one of those letters that went to the contract department, it says that we discussed the matter with Mr. Smith and he approved the deal or the submission of the deal.

Q. Yes, I appreciate that, that your letters say Mr. Smith said it was all right, but you are not again changing the fact that the Paramount routine policy was to send out a form contract to New York for approval and that your form said that no contract would be binding until approved in New York, isn't that right?

A. That is right. I am not trying to deny that, but the fact remains that we approved them in our office and all the exhibitors know it.

Q. I would like you to turn to the picture September Affair and the picture Redhead and the Cowboy on your schedule, Mr. Taylor.

A. September Affair? [3121]

Q. Yes, and Redhead and the Cowboy.

A. Yes.

Q. Now, you remember, Mr. Taylor, that Mr. Lehman wrote you a letter on March 26, 1951. It is a letter in evidence as Plaintiff's Exhibit 3-B.

Mr. Mitchell: Will you show the letter to the witness, please?

Mr. Corinblit: Certainly.

Mr. Mitchell: If you are going to ask him about it.

(Testimony of Alfred R. Taylor.)

(Document handed to the witness.)

The Witness: Yes, sir.

Q. (By Mr. Corinblit): That was on what date? Do you have that there on the letter?

A. March 26, 1951.

Q. Now, shortly after you received that letter you called Mr. Lehman and told him that—you called Mr. Lehman and told him that those two pictures, September Affair and Redhead and the Cowboy, had been sold, isn't that right?

A. As I recall the conversation, yes.

Q. You do recall the conversation?

A. I say as I recall the conversation, yes.

Q. You told him that those two pictures had been sold? A. That is right.

Q. And therefore you denied his request to negotiate with you for those two pictures? [3122]

A. Yes.

Q. Is that right? A. Yes. [3123]

Q. Now, the exhibit that you have in front of you shows that those two pictures were sold to what theatres? You told him that they were sold to what theatres?

A. I don't know as I told him what theatres they were sold to, but the pictures were awarded to the Academy and the Southside—that is September Affair and Redhead and the Cowboy were awarded to the same theatres.

Q. How did the Southside get it?

A. They negotiated for it.

Q. Negotiated for it? A. Yes.